PROPOSALS TO IMPROVE THE EFFECTIVENESS OF THE FEDERAL AVIATION ADMINISTRATION

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HEARINGS

BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES
ONE HUNDREDTH CONGRESS
SECOND SESSION

JUNE 2 AND 22, 1988

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PROPOSALS TO IMPROVE THE EFFECTIVENESS OF THE FEDERAL AVIATION ADMINISTRATION

THURSDAY, JUNE 2, 1988

House of Representatives,
Subcommittee on Aviation,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:07 p.m., in room 2167, Rayburn House Office Building, Hon. Norman Y. Mineta (chairman of the subcommittee) presiding.

Mr. Mineta. The Aviation Subcommittee will please come to order.

Today we are beginning hearings on the important question of whether the effectiveness of Federal Aviation Administration can be improved by changes in the Agency's organizational structure or the basic authority under which it operates.

These hearings are one of a series of actions which the Aviation Subcommittee has taken to ensure that the FAA adequately meets the challenges and changes created by airline deregulation.

One important area of the subcommittee's concern has been the adequacy of FAA staffing. We have been particularly concerned with the FAA's failure to adequately rebuild the air traffic control work force after the 1981 strike, especially in light of the increased demands that have been created by deregulation. We have also been deeply concerned by the FAA's cutbacks in airline safety inspector work force in the early 1980's, a time when the competitive pressures of deregulation and the establishment of new air carriers were creating an increased need for FAA oversight of airline management and operation. In both these cases, the committee held a number of hearings and worked with the administration and the Appropriations Committees to bring FAA staffing up to adequate levels.

The subcommittee has also devoted considerable attention to FAA's program to modernize the air traffic control system and improve airports so that more traffic can be handled both safely and efficiently. Last year, we passed a 5-year renewal of the programs supported by the Airport and Airway Trust Fund for modernizing airports and airways. Under our bill, more than $20 billion will be made available during the next 5 years. Over the years, our funding authorization for these programs has been accompanied by oversight hearings and related efforts to keep the programs on schedule and on budget.

The subcommittee has also devoted considerable attention to FAA's safety rulemaking, particularly in the area of cabin safety and crash survivability. With the cooperation of FAA, long overdue safety regulations are finally being implemented.

Now, the hearing we are holding today cuts across all of these issues and deals with whether the FAA is now unable to carry out its responsibilities as effectively as it might because of its organizational structure or because of the basic authority under which it operates.

I will not go into detail on these issues since they have been widely discussed in the aviation community during the past year, and I expect them to be thoroughly covered by the our witnesses.

Briefly, we will be considering whether the FAA is handicapped unnecessarily by the Governmentwide personnel and procurement regulations under which it must operate. We will also look at the division of authority between the FAA's regional offices and the FAA headquarters; the lack of a reliable stream of funding, particularly for capital development programs supported by the Airport and Airway Trust Fund; and whether conflicts are created by the dual statutory directives to the FAA to promote civil aeronautics and regulate it's safety. We will also consider the costs and benefits of the Department of Transportation's supervision of FAA.

I look forward to the testimony we will be receiving on the nature of these problems and whether they can be solved under existing law or whether new legislation is in fact needed.

At this time, I'm pleased to yield to the ranking Republican on the full Committee on Public Works and Transportation, the very distinguished gentleman from Arkansas, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Thank you very much, Mr. Chairman.

Mr. Chairman, over the past decade, we have seen many changes in the airline industry. For example, the industry was deregulated in 1978; the air traffic controllers went on strike in 1981; passenger traffic has nearly doubled; a major effort to modernize the air traffic control system, known as the NAS Plan, was launched.

And these are just some of the dramatic changes we've seen. But as these changes were taking place, the agency charged with responding to them, the Federal Aviation Administration, has remained essentially the same. As a result, there are increasing concerns that the FAA, as it is currently structured, is unable to meet its current responsibilities, let alone the challenges of the nineties and beyond.

These concerns have been reinforced by the recent findings of the President's Aviation Safety Commission. This Commission found that the aviation system is safe, but that the regulatory structure designed to ensure aviation safety is inadequate to deal with future growth and technological change.

Secretary Burnley, who is responsible for overseeing the FAA, has also recognized the need for change. A task force he established has already recommended several changes that can be made without legislation. He has also offered five criteria by which to judge any legislative reforms that we consider in the future.

Most of the legislative proposals, so far, have focused on making the FAA independent. This is an approach that has been criticized by Secretary Burnley, NTSB Chairman, Jim Burnett, and others. I also have some concerns about it.

It seems to me that there are four basic problems with the FAA. These are: One, Personnel rules that prevent FAA from hiring, compensating, and moving controllers and other employee around to the extent necessary; Two, Procurement rules that prevent FAA from bringing new technology on line quickly enough; Three, The budget and appropriations processes that prevent FAA from getting the funds it needs despite a $6 billion surplus in the Aviation Trust Fund; and Four, An oversight process under which FAA is frequently micro-managed by DOT and OMB.

Simply making FAA independent would address only the fourth problem. It would do nothing to solve the first three. So, while I remain open to proposals for an independent FAA, I think we also must consider other solutions that address all the problems that the FAA faces. I think we must move cautiously in this area. Restructuring the FAA is a major step that we should undertake only after careful deliberation. We do not want to take such significant actions merely because of disagreements with a particular personality or a specific policy decision.

Mr. Chairman, I would also like to take this opportunity to emphasize once again the important of the funding issues.

Any reform of the FAA must involve the restoration of trust of in the trust fund.

This means that the taxes and fees paid by passengers and other users of the aviation system should actually be spent to improve and expand that system. They should no longer be used to make the deficit appear smaller on paper. When we do this, when we stop the current budgetary charade, then we will have the resources to fund the sort of changes that the FAA reformers are advocating here today.

So, in conclusion, Mr. Chairman, I commend you for calling this hearing on this important issue and I join you in welcoming the many fine witnesses we have here today.

Thank you, Mr. Chairman.

Mr. Mineta. Are there any other Members who wish to make opening statements?

[No response.]

Mr. Mineta. If not, there is a call of the House for a recorded vote at the present time. So we'll go ahead and recess for 15 minutes.

[Recess.]

Mr. Mineta. The Aviation Subcommittee will please come to order.

Mr. Mineta. At this time I'd like to call forward the person who chairs the National Transportation Safety Board, and does a very fine job, our very fine friend, Mr. Burnett, the Honorable Jim Burnett.

Mr. Chairman, we have your statement. It will be made a part of the record, and so please proceed in your own fashion.

TESTIMONY OF HON. JIM BURNETT, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. BURNETT. Thank you, Mr. Chairman, and members of the committee. I appreciate this opportunity to appear before you to discuss various proposals to reorganize the Federal Aviation Administration. I think the discussions taking place in both bodies of Congress and within the Government and industry are necessary and constructive. I commend you for holding these hearings to seek additional information on changes needed to permit the FAA to function more effectively.

Before going any further, I want to point out that the Board has not taken a position on FAA reorganization, so the views expressed in the testimony are my own.

We all agree that there are problems in the aviation system—unprecedented traffic growth, outdated equipment, controller staffing and insufficient landing slots and runways, to name a few. Add to these the crescendo of passenger complaints regarding cancelled flights, poor on-time performance, loss of baggage and overall bad service, and it's easy to understand why there is such a focus on improved efficiency.

While I'm sympathetic to the concerns that the FAA's structure and the general authority under which it operates may prevent responsive and innovative solutions to problems, my concerns are centered on the FAA's ability to regulate the aviation system safely.

In that regard, I want to focus my testimony on recent proposals to separate the FAA from the Department of Transportation, a move that, in my opinion, will not solve the administrative problems within the FAA and could potentially run the risk of reducing safety oversight.

I've listened with great interest to the arguments for taking the FAA out of DOT. And they seen to boil down to two basic points. First the DOT Secretary's interference in technical matters causes undue delay in many instances, and sometimes results in actions not being taken that should be; and secondly, the governmental process of funding and procurement is cumbersome and severely limits the FAA's ability to adapt to a dynamic technological environment.

To the first point, I would have to agree that DOT does, indeed, interfere in FAA internal matters and causes some delays. I do not question that there are times when that interference is not helpful. It should be noted that the Office of Management and Budget causes its share of delays as well, and these are often blamed on the Department. I think, technically, the paper work is sitting on the Secretary's desk, while OMB is in their process of review, so that gets charged to them.

I would submit, however, that the over-the-shoulder review of FAA actions by an accountable entity is a good thing overall. My 6 years at the Board, overlapping the tenures of three Transportation Secretaries and three FAA Administrators, have convinced me that the frustration of delays and interference in FAA decision-making are vastly outweighed by the significant safety achievements we have been able to realize through a Cabinet-level entity more susceptible to public pressure. From where I sit, safety concerns must be paramount.

Let me give you an example. Following airline deregulation in 1978, as predicted, many new carriers entered the industry while existing carriers expanded rapidly to meet demand. At a time when the industry began to reorganize, the FAA, in the face of warnings from the Safety Board, the Congress and others, did not increase inspector staffing significantly until 1984.

Indeed, prior to the implementation of deregulation, the FAA Administrator insisted that additional inspectors were not needed. And even when the inspection force was increased, the quality of inspections was in question. This point was driven home during a 1983 Safety Board investigation of a commuter accident near Pickneyville, IL. Evidence gathered in a public hearing revealed woefully inadequate FAA surveillance activities.

Subsequently, the Secretary announced a series of actions to address these and other safety issues.

According to an April 1987 General Accounting Office report to the Congress, and I quote:

> Today FAA is revamping its program as a result of actions launched by the Secretary in 1984. The Secretary's initiatives resulted in an FAA plan to overhaul program operations and the decision, announced in September, 1985, to substantially increase program staff.

Now, it can be argued that the Secretary did not respond to the need until the issue became a public embarrassment. But even for those who take that position, the point remains that the FAA, on its own, neither recognized nor attempted to correct major deficiencies in its system designed to protect passenger safety.

I don't want to belabor the point, but there is also the matter of political clout at budget time. Assuming a quiet year in aviation and a major budget crunch, an independent FAA faces the prospect of being left out in the cold in the absence of cabinet-level representation at OMB. And being the head of an independent agency myself, I understand how that happens.

My intent here is not to discredit the FAA. It is an agency of dedicated people with a vital mission. The FAA has presided over the safest, most complex aviation system in the world. But it has not accomplished this without help: the Congress, the NTSB, and the Department of Transportation. A combination of oversight and review that works, not always efficiently, but effectively.

The FAA is a technical organization. The agency head generally has a background either in the aviation industry or military aviation. On the other hand, the Department of Transportation is not burdened with an industry perspective. I believe those approaches appropriately balance the needs of the industry with those of the public.

It is not coincidental that the proposal to separate the FAA from the DOT is enthusiastically supported by the aviation special interests. An independent FAA might be good for the industry, being in my view the equivalent of an industry relief bill, but I believe it could be detrimental to the safety of the traveling public.

So, what are the relevant concerns? I believe they are contained in the second argument for an independent FAA: cumbersome procurement procedures, unstable long-term funding arrangements and inflexible staff compensation systems. While the Safety Board's program does not involve major procurements, as a small technical agency, I know only too well the difficulties of effective program management and long-term planning in the face of constantly fluctuating and uncertain funding levels. I also understand and share the increasingly serious problem of attempting to recruit and retain highly qualified staff under the current Government personnel system. However, the need to find effective and equitable solutions to these problems remains if the FAA is to be able to keep up with record growth.

Mr. Chairman, I do not pretend to have all the answers, but I'm convinced that you are asking the right questions, and I will be very pleased to respond to questions.

Mr. MINETA. Thank you very much, Mr. Chairman.

In your testimony, you correctly analyzed a key issue of FAA independence, and that is: does DOT review of FAA decision making help or hurt aviation safety. Now your feeling is that safety benefits of DOT's supervision outweigh the negative aspects. And in support of your position you cite one case in which the Department of Transportation intervened to further safety, namely the Secretary's decision to hire more FAA inspectors.

However, as you suggest, the Secretary did not intervene on this issue until this Subcommittee on Aviation had held hearings and taken other action to highlight the problem. Can you point to any other cases in which the Department of Transportation oversight of the Federal Aviation Administration produced safety benefits?

Mr. BURNETT. Well, one of the difficulties we have from the NTSB's perspective, and I think also probably from the perspective the Congress, is that it is very hard to tell who shot J.R. in these disputes between the FAA and the DOT, and who held up what, and who's position was what in their internal discussions.

I believe that the progress that we've made on cockpit voice recorders, and flight data recorder regulations, which seems to be coming to a successful fruition, would not have been made without intervention on the part of the Department of Transportation with the FAA. In fact, the first real success we had, after many years of trying to get the FAA to move on that area, was when we managed, through intervention by the Department of Transportation, to keep the FAA from causing the United States to take a position against advanced FDR and CVR requirements in the international forum of the International Civil Aviation Organization. And I think that was a watershed in helping us move in the right direction.

Another example, I think, where you've had a lot of congressional activity and success in getting some crashworthiness, particularly fire safety standards, and hopefully soon, some improved seat strength standards, implemented that this committee has been so much involved in, I think perhaps that would not have even been as easy if it had not been for DOT's sensitivity in the area.

When I mentioned in my statement that the DOT did not react until there was public embarrassment, the thing I ought most to fear from the FAA is, and especially an independent FAA, that it will not be willing to act even when there is public embarrassment. It has always seemed to me rather amazing that the FAA was as insensitive and unresponsive to concerns, absent a major catastrophic accident, than they are.

So those are some examples that I could give. And I think my sense of this is not only based on my work in the aviation area, but through five modes of transportation it has seemed to me to be helpful in all of those areas, to have the opportunity to appeal above the modal agencies, toward a Department of Transportation that is less involved, and less intertwined with the industry that it regulates, then are the modal agencies. And that's a problem that exists not only with the FAA, but across the board, with the possible exception of NHTSA.

Mr. MINETA. Let me ask, just sort of thinking out loud, is there a belief that there's too much political interference in the work of the FAA since the FAA is a technical body? Is there a concern whether political influence comes from the Congress, whether it comes from an airframe manufacturer, whether it comes from the general aviation industry, whether it comes from engine manufacturers, whether it comes from whomever, that the FAA should be more insulated or that they would be less susceptible to political pressure if they were independent of the DOT that has a Secretary that is appointed politically?

Mr. BURNETT. Well, I have tried to stay away from using that term, political influence, because I think it's so often misunderstood.

I think that one of the problems we have in dealing with the FAA and its relationship with industry, is that because of the pervasive regulation that exists, there's almost a unity of thought. To give you an example, with the certification of an aircraft, by the time the FAA certifies an aircraft, it's almost the codesigner, I think in a sense, of what takes place. So then it's not in as good a position as perhaps NHTSA is, to take an arm's length view of the quality of the vehicle, having been so involved in it.

Now, I'm not——

Mr. MINETA. But NHTSA doesn't have a designated engineering representative at General Motors designing their cars.

Mr. BURNETT. Yes. And see, that's the difference. And I'm not arguing against that pervasive regulation. It's a fact that I don't think we're apt to back away from. But it's one of the things that I think produces, on the part of the FAA, the same kind of perspective that the industry has on the major issues.

I don't want to suggest that that's in any way corrupt. Sometimes when you start talking about political influence, you get—people get the sense of a taint that I don't think is really what's there. I think the FAA has generally competent people, who are sincerely trying to do their jobs, but who basically tend to regard the concerns that the mass of the public have about aviation safety are you know, meddlesome, and therefore, they are not as responsive to those issues as they perhaps should be.

I think on the other side there's been—one of the problems with DOT's involvement in these issues, is that they are always a good candidate for the accusation that there's political influence. And in this debate, some people who have wanted to see the FAA taken out of the DOT, have alleged that there's political meddling with the FAA. Well, in a sense there is. But I don't believe it's the special interest, it's meddling that is basically responding to special interest, because I think they have their access to the FAA that's much better than that at the DOT. But it's the kind of thing that says, hey, we're accountable for what goes on out there, and we're going to be accountable for the public reaction to what you do, so therefore we want to assert some authority over what's happening.

I think there's some positive benefits to that process.

Mr. MINETA. Is the FAA such a technical body that people are being promoted there to managerial positions because of their technical ability, and not because of their managerial skills?

Mr. BURNETT. Well, I think across the board in technical agencies, that's a problem. You have to be very careful, because there's a tendency—and it's also something that has happened, and happens, I think, almost by necessity at the Board, where in order to try to hold on to technically very valuable people, and because of the constraints that you have in the Government personnel system, you promote them to managerial positions.

I think the FAA, one reason that they're able to compete against the NTSB for personnel as effectively as they do, is that they do create managerial positions that are created, not because they make sense managementwise, but because you need to have a managerial position in order to fill the job at certain grade levels.

So those are in part, I think, a manifestation of some of the limitations that we have within the governmental system on hiring the most competent technical personnel in a very competitive environment for that kind of expertise.

Mr. MINETA. Now, in your discussion of the disadvantages of DOT supervision of the FAA, you point to delays in FAA decisionmaking. There's another disadvantage which is frequently raised, and that is that DOT's management of administrative matters affecting the FAA may impair FAA morale and make it difficult for the FAA to function effectively. I imagine you have heard the same reports that I have about the difficulties the FAA has encountered in getting DOT approval for appointments to high level positions. Similarly, there have been reports of high FAA officials having to clear their travel plans with the Department, and of excessive DOT involvement in the FAA's public relations office.

Do you have any views on whether these types of interferences are a serious impairment to the effective functioning of the FAA?

Mr. BURNETT. Well, my only window on that is what I read in the newspaper, and with respect to our friends of the press that are here, I don't know whether that's always the straight skinny. But it's the best information I have.

I think, for instance, as far as having to have DOT approval for filling of top level positions, I don't know—the Safety Board has to get OPM approval, even though we're independent, for some positions, although they're Schedule C's. And so I don't know exactly what the nature of the positions are, or how far that system goes. So I don't really have a basis for saying that that is a—I think the most obvious examples of it have been the allegations of interference in press policy. And I can understand how that would be frustrating to the FAA Administrator. That's one of the advantages of being an independent agency that I understand, is that there are some things that you can run that you don't have to ask anybody else about.

On the other hand, I can also understand how the DOT, wanting to put the best foot forward for its husbandry of the safety system, would want to have some input into those issues. So it's really a hard thing for me to shed light on, although, I also hear those same kinds of reports of low morale in agencies across the board, across the board modally in the DOT, because they tend to think of themselves as people who work for the agency, for the FAA, the Federal Railroad Administration, the Coast Guard, they don't work for the DOT. And so, they're very sensitive about their agency getting credit for the good they do, rather than the DOT. And so how you handle press policy has some impact on morale in those situations. And that may be significant.

Mr. **Mineta**. Mr. Ballenger.

Mr. **Ballenger**. Thank you, Mr. Chairman.

Mr. Burnett, I don't have a great deal of questions, but one comes to my mind since the FAA has contracted out air traffic control to private providers in some small airports. It just so happens that the airport at my home in Hickory, NC, has a tower, and people are talking to me about the idea of privatizing its operations. In your considered opinion, is this likely to be a practical idea, as far as safety is concerned? Do you have any indications as to how it's worked where it has been used?

Mr. **Burnett**. Well, there are many levels of what we call privatization. And I think, for instance, if the issue is you have a tower and you don't have staffing for it, so therefore, you don't have control, and if a privatization system can be worked out so that you now provide the benefits of air traffic control where it otherwise would not be provided, that may be—it certainly on the face of it appears to be a step in the right direction.

Certainly, I think, we have—I know we have one ground collision that's under investigation, which occurred at an airport where there was—the airport control system was being operated other than by the FAA. But we certainly don't have any basis right now for thinking that those systems are necessarily less safe. And so there might be some constructive action there.

I think there's been much discussion of the whole idea of in some way either privatizing, or moving toward some sort of independent Federal authority for the operating, the whole air traffic control operating system. I certainly am not opposed to that, conceptually, as long as the FAA maintains the same kind of regulatory authority over that privatized industry, or independent Federal authority, that it would have over an airline. So that the FAA could basically come in, and they could keep that entity from, for instance, increasing the number of hours that controllers work, if they thought that were necessary, or increasing the time that they work without a break, and would basically have the same kind of broad safety regulatory authority that we have otherwise.

I think there is another key issue that has to be understood in all of this discussion of privatization or changing the air traffic control system's management. And that is, I believe that we have a system that's operating under a great deal of stress, as it is. And we have to be very careful that if we start making major management changes, that that's done with a great deal of planning, that it's not done precipitously, and that we be very careful that we don't, in that process of making a change, that we add additional stress to a system that's already stressed, and could have some very unfortunate occurrences in the process. So all those are factors that have to be weighed in considering that issue.

Mr. **Ballenger**. Speaking of stress, recent reports indicate the number of near mid-air collisions, in operational areas, have begun to decline. What, in your opinion, does this say about the operation of the FAA?

Mr. **Burnett**. Well, you first have to understand that the numbers are better than they were last year. But we had two consecutive years of great increases. Near mid-air collisions involving air carriers increased about 40 percent a year for a couple of years, 2 or 3 years in a row. So, the numbers, although they're better, are still not good. In fact, they're bad.

But I keep a sort of a running total of reports of near mid-air collisions in which an air carrier was within 500 feet of another aircraft, which is in most cases a very close situation. Last year they were running one a day for most of the year, and then I think in late July or early August, they got up to two a day. This year, they're running about one every other day. So, if we're getting good numbers, then we don't have quite, it appears to me, quite the risk that we had last year, but nevertheless I think the risk is too high.

Now, why has that happened? I suspect that the FAA is doing a better job of managing traffic, because they do have this aircraft situational display, although the predictive capability is still not on line for that. But it's also possible that those numbers are subjective, and that we may not be getting reports of all the incidents that happen out there. So, you have to go behind the numbers to some extent.

Mr. **Ballenger**. Thank you, Mr. Chairman.

Mr. **Mineta**. Mr. Perkins?

Mr. **Perkins**. Mr. Chairman, I'm very interested in terms of some of the things that you're talking about, the FAA being—considered meddlesome, when they're dealing with public concerns. Now, I know this is not directly addressing the problem of whether it should be a separate entity or not, but in terms of responsiveness, what do you think is a valid approach for somebody to take to try to see the responsiveness to public concerns increased?

Mr. **Burnett**. Well, that's something I've wrestled with a lot, and I wish I had an answer for it. Among the things that I think need to be considered, and I'm not sure this is a good idea, one of the problems is that the FAA Administrator has, I think, a hard time getting control of the bureaucracy there. And part of the reason is that I think the bureaucrats see that the Administrator doesn't last too long, and they can go ahead and do what they want to and hope that, you know, the pain will go away before they actually have to do something that they might not want to do. And so one possible solution for that is to give a fixed term to the Administrator.

On the other hand, if outside entities are trying to oversee the FAA, including the Administrator, for instance committee of Congress, having a fixed term may make the Administrator less sensitive to some of these issues. So you have pros and cons. I guess I was once pretty sure that it would be a good idea to give a fixed term to the Administrator. I'm not as sure of that now. In fact, I somewhat suspect that it wouldn't make a whole lot of difference. So I don't have a lot of answers.

I think the real answer is that the FAA needs a lot of oversight. And, you know, there's also that aspect that's frustrating for the Board, I'm sure for them, that sometimes you think you've got more oversight than you can stand, that you're just staggering under the load of it. And there's something to that, too. But I think that we should continue to have to have various entities, and I think one of the most effective ways of doing that is to have the DOT, which does have a high public profile, and catches the public concern, I think, much more quickly than the FAA, has some clout to cause the FAA to function.

I also want to say that I think, very clearly, there are some types of issues where the DOT's involvement in FAA's decision making process are not constructive. I think, typically, where you have a highly technical, but low visibility issue, that has very little public interest, but yet is highly technical, and the typical thing might be a general aviation issue where the Department is not apt to have a lot of public input on the issue, and is probably going to react to that issue from more of an ideological, are we proregulation, or antiregulation, that sort of situation, and can make it very difficult ~~for the~~ FAA to deal with those types of problems.

Although, I disagree with John Baker, the head of the Aircraft Owners & Pilots Association, on this issue, if I were in his position, I'd probably be taking the same course that he is. Because I can see that those types of issues are probably not dealt with as well by the DOT, as they are by the FAA left alone.

Mr. Perkins. That's all, Mr. Chairman.

Mr. Mineta. Mr. Petri.

[No response.]

Mr. Mineta. Mr. Molinari?

Mr. Molinari. Mr. Chairman, I appreciate your offer. I'm not a member of this subcommittee, but I would like to just simply ask one question.

It's 10 years, Jim, since deregulation went into effect, and I'd be interested in your views on how that has impacted the effectiveness of FAA?

Mr. Burnett. Well, I think it's impact on the effectiveness of FAA has probably not been good. But I don't think that should be blamed on deregulation. I want to emphasize that I think in balance, at least to date, deregulation has had, overall, a positive impact in terms of its introduction of a competitive environment, and economic benefits to the American people who want to fly.

I think the fact that it's been so successful, has meant that we have a whole lot more demand being placed on the aviation system than we used to, and we weren't very well prepared for that. And I say we, in the sense of the whole governmental system.

I think that the fact that you do have many more carriers, and that they now have, because of the competitive pressures, that they have the temptation of trying to avoid compliance with the rules that they didn't used to have, makes it important that the FAA have a different kind of inspection system from what they used to have. The old, kind of a gentleman's relationship, that existed before, I don't think is good enough any more. And I don't think the FAA has managed to fully adjust to that. I don't think the air carriers really want them to adjust to that.

Mr. MOLINARI. If I could just follow up on that. You mentioned the term, competitive pressures. What I'm seeing around the country is a diminution of competition, rather than increasing, and I'm wondering if you truly believe that the competitive pressure is still affecting the marketplace, and I see us moving in the opposite direction, frankly——

Mr. BURNETT. We may be be talking a little bit about different things. In the sense that before deregulation, basically a carrier would have a fare and route, and they weren't competing on the basis of price, they were competing on the basis of service. So if the FAA tried to make them do something that they could pass on, and it would help justify a fare increase, all the better for them. You don't have that any more. Now it's a situation where you are competing on the basis of price, and I don't think there's any doubt that there still is price competition out there, although it may not be as severe as it was a few months ago, or a few years ago. I'm not in a position to answer that.

However, I think now there's a situation where you have to at least entertain the idea that carriers may not do what the regulations require of them, and you have to have a surveillance system that makes everybody play by the same rules. Because we could have the unfortunate situation develop, and I think this may have happened in some cases, whereby not complying with the rules the bad actors have an advantage on those who want to, and they force the whole system to come down, all the standards to come down. And we've got to watch against that.

Mr. MOLINARI. As a result of that competitive pressure, do you see a lessening of safety practices on the part of any of the carriers?

Mr. BURNETT. Well, that whole issue has been primarily focused on whether or not we have maintenance that's not as good as it used to be. We can find some examples where we don't have good maintenance. We have that in some accident investigations, and we have some examples in the course of several investigations we have conducted in the past and that we're conducting now, of issues arising about the adequacy of the FAA's surveillance.

I think when you look at the problems of our Nation's air carrier system, that deteriorating maintenance does not seem to me to be as major an issue as I could have claimed. Now we've got a major accident under investigation right now, the Aloha accident, once we get answers to that, we may have to change our position. But we don't have a lot of answers, yet. I've been concerned that the greater problem was the fact that we have so much demand for aviation services, and we're having to bring in a lot of new pilots. It's that system that—that problem that creates the greatest threat of some deterioration in safety, simply because we do not have a good, even, regulatory system in place, to see that every pilot in every cockpit is seasoned the way they traditionally have been, in large part, under the old system, with, of course, much less demand for services.

Mr. **Molinari**. Thank you, Mr. Chairman, I appreciate the courtesy.

Mr. **Mineta**. Mr. Bosco?

Mr. **Bosco**. Thank you, Mr. Chairman, and Mr. Burnett, I appreciate your testimony as well.

Although, I think of everything you said, the part that was most compelling was the fact that after only 6 years at the Board, you have sat through the tenure of three Transportation Secretaries, and three FAA Administrators. And I wonder if that alone isn't part of the problem that we have now. I can't conceive a system operating effectively, and efficiently, with virtually a combination of 6 people coming and going over a 6-year period, that have jurisdiction over it. I don't know how we would go about changing that. Of course, there's a consideration of a fixed tenure for the job, but that doesn't necessarily mean the same person would fill out that term.

But is this a serious problem, this revolving door of Administrators and Secretaries?

Mr. **Burnett**. I think that that—and I hadn't focused on it before—about the interrelationship of having a secretary and an administrator working together, and that's something really I hadn't put a great deal of thought into. I think it's a good point to think about.

But the fact that the Administrators do seem to come and go too quickly, I think, before they can—part of the problem is that it takes so long for an agency head to get control of the agency. I experienced that at NTSB, and I think other agency heads experience it. The FAA is a much more complex bureaucracy than most of the agencies——

Mr. **Bosco**. May I interrupt you and ask you, assuming a person of good skill, and above average intelligence, how long does it take that person to really understand the nuances of running the FAA, working with the people that count, understanding how the whole thing works, how long would you say, in terms of months or years?

Mr. **Burnett**. Well, it's more than understanding the nuances. That's part of it. It's learning what the buttons are you can press, and also managing to project that influence down through several layers of bureaucracy. And it takes a long time. I think the best do it in several months, and I think that probably differs from agency to agency. I don't think the problems you have at the NTSB would compare with what you have at the FAA, where you have so many more varied functions, all combined into one agency with so many people to manage, and so much depth in the organizational chart?

Mr. **Bosco**. Would you say that six years and three Secretaries, and three FAA Administrators amounts to basically on-the-job training and not much more than that?

Mr. **Burnett**. Well, that's a generalization, I think, I'm not sure I quite want to make. You know, there are those who would say that the problem is not that the DOT Secretaries or the FAA Administrators didn't stay long enough, it's that Burnett stayed too long.

Mr. **Bosco**. We occasionally get that, as well.

You sort of set up the scenario whereby you have one group that's fairly technical over here, and they do certain things, but you can't have that without the political group over here, and that the Cabinet Secretary is much better able to secure funds, which we haven't really seen evidence of, but technically they should be better able to secure funds.

Mr. BURNETT. Well, I would disagree on that point. I think that DOT has done a pretty good job of springing loose additional people for the FAA in a very tough environment to do that sort of thing. So my sense is that that's worked well for the FAA.

Mr. BOSCO. But I'd like to ask you this. Is part of our problem that we are overly politicizing what basically should be a fairly technical function, that is seeing that airplanes are safe, seeing that the air traffic flows smoothly, that landings and take-offs take place on time, what's political about all that?

Mr. BURNETT. Well, I think what you have is that's exactly the attitude that you have internally within the FAA. And I think most of the frustrations that are vented about how well the FAA works, are frustrations that are vented because of precisely that attitude, that, well, we know best how to manage this, we're the technical people, but included in that because they're the technical people and have that technical expertise, it's usually gained to a great part because of involvement with the industry. And therefore, it comes with an industry prospective that makes it very hard for the FAA to step out and critique how the industry functions as far as its safety responsibilities.

Mr. BOSCO. And the Cabinet Secretaries being a little more political don't normally take an industry prospective?

Mr. BURNETT. Well, I think they don't come out of the industry. I think the DOT Secretaries, I don't know— I'd have to review them to see which, if any, might have come out of the aviation industry. But that's not the same kind of nexus between the Cabinet Secretary and the FAA Administrator, as there is—the Cabinet Secretary and the industry, as there is between the FAA Administrator and the industry.

Mr. BOSCO. Thank you very much.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Skaggs?

Mr. SKAGGS. Thank you, Mr. Chairman.

Mr. Chairman, I was wondering very briefly if there are one or two things from your point of view, concerned primarily with safety of the air transportation system, that you would highlight for us by way of structural or organizational changes that you would make in the Department or the FAA?

Mr. BURNETT. Well, I think we're going to have to look at ways for them, as well as the NTSB, I might add, to be more competitive in attracting highly technical people. I just don't think that we have a system now that's been structured to allow us to do that.

In addition to having grade levels that keep us from competing at the top levels, I think, as effectively for people as we might, things like the double dipping restrictions now make us completely uncompetitive in trying to track people who have military backgrounds. And for some of the specialties that the FAA and the NTSB need, that's a principal source. I think both the NTSB and the FAA have traditionally hired more out of the military than was probably wise, and to have that source cut out was a major shock to the system.

I think the FAA has to be able to procure new technology, both in terms of hardware and software, quickly in order to keep the air traffic control system up to date. And if there are constraints on that, those have to be solved.

Now, the other side of that story, and I think the DOT could make a compelling argument, that they save the Country some money by reviewing what the FAA does. Because again, you've got the FAA which is very much involved with the industry that it's purchasing from, and the DOT probably less so. But we've got to have enough flexibility to be able to react in a hurry, and in order to keep pace with improving technology.

Mr. SKAGGS. So personnel and procurement?

Mr. BURNETT. I think we need to continue a great deal of oversight.

Mr. SKAGGS. Thank you, Mr. Chairman.

Mr. MINETA. Congressman Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

Mr. Burnett, recently my offices have been dealing with some pilot examiner certification standards on a regional basis. I won't go into the details of just what those particular cases may have been.

But I'd like for you to comment, if you will, on some of the steps that FAA headquarters may be taking to standardize not only the setting of these standards, but the implementation of these certification standards, inspection standards, and so forth. Could you comment on that?

Mr. BURNETT. Well, I'm not sure that I know precisely what issue you're addressing.

Mr. ROWLAND. Well, the regional offices have jurisdiction over these standards, and implementation of these standards, and the setting of, how does that compare with—what is the Central FAA headquarters doing in oversight?

Mr. BURNETT. Well, apparently, I suppose you're talking about this general issue of withdrawing a lot of power from the regional administrators and trying to standardize a lot of their regulatory——

Mr. ROWLAND. That's what I'm talking about, standardization.

Mr. BURNETT [continuing]. Programs across the country. The NTSB, I think, has documented in many of our investigations, problems with lack of standardization between FAA regions that interpret various regulations of the FAA quite differently, apply them quite differently.

Now, I think this is sort of a double-edged sword, in some situations that can be positive. It allows some regional administrators who are aggressive and innovative to be innovative and perhaps to break a little new ground that wouldn't otherwise be possible. But overall, I think, especially when it's combined with an air carrier's environment, in which there is now competition, and national rather than regional competition, like we used to have, that if you have inconsistencies between the regions, that's almost intolerable for the person who has to abide by the higher standard because they're in a competitive situation.

So the effect of that will be to bring everybody down to the lowest standard that's being enforced. So I think I view it overall as a positive step that the FAA is getting more centralized authority. Now that's not to say that there won't be some drawbacks to that, and again, I think probably for—well, for some types of issues, I would think like general aviation pilot regulation and that sort of thing, that that probably wouldn't be constructive in that environment, but in an air carrier environment it would be.

Mr. ROWLAND. What do you think about the FAA's general interest—I know I hear from some general aviation people that they feel that FAA maybe doesn't have the interest that they should have, or that the general aviation people would like for them to have, some lack of confidence it seems in that interest. Do you have any feeling about that at all?

Mr. BURNETT. Well, I think that the FAA is, I think, very protective of the general aviation industry. But I agree with you, that that's not the perception there is out there, because general aviation feels very threatened right now, and I think is. That's a hard issue because general aviation, is very important to this country. I think it's one of the sad things that I see in my job, the extent to which general aviation manufacturing, an important industry in this country, is in trouble, and the decrease in general aviation activity. I think it will be a very unwise thing if we allow the general aviation industry to atrophy. It already has to a great extent, and for that to continue is a mistake.

At the same time, I think that it is in the enlightened interest of general aviation that we see to it that general aviation does not threaten the safety of air carrier operations in the country. And to the extent that we either have that threat, or even that it is perceived, I think that represents a threat to general aviation, because we now have the great majority of the American people flying in air carriers, and I don't think that there's going to be any doubt as to how conflicts between those two systems are going to be resolved. I think sometimes general aviation has not been as enlightened as it should be in pursuing general aviation interests, rather than pandering to the opinions of general aviation people who don't want to change anything, don't want to give ground anywhere.

I think, although I think the FAA went too far with its rule on mode C transponders, I think we very much need an improved rule, and I think the general aviation's sort of held no attitude on that, is not in the best interest of general aviation.

Mr. ROWLAND. Well, you anticipated my next question, so I won't have to ask it, then.

Mr. BURNETT. Thank you.

Mr. ROWLAND. Thank you, Mr. Burnett.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Chairman, let me ask about the oft quoted assertion about whether the FAA is able to deal effectively with this dual charge that they have of promoting civil aviation while at the same time regulating its safety. And the suggestion is that the FAA may find itself in a conflict between furnishing the best possible, let's say, air traffic control service to users on the one hand, and protecting safety on the other.

I was wondering if you see any evidence of this kind of possible conflict raising any kind of significant safety problems?

Mr. BURNETT. Well, you know, there have been many proposals, and I've heard them since I've been with the Safety Board, that some solution for the frustration that we have with the FAA might be to take away the FAA's mandate to promote aviation.

I don't know that that—I really don't believe that's going to help anything, and it might be a step in the wrong direction, because I think that the healthiest way for the FAA to approach its problems is to admit that it does have to consider safety in combination with the efficiency of the system.

Sometimes there are trade-offs between those two values. More often I think they go hand in hand. I really don't see what can be accomplished by trying to somehow split off the FAA's mandate. I think it's a good idea to have aviation policy insofar as possible in the hand of one system, that has to make accounts for the fact that there are trade-offs between various goals and mandates.

Mr. MINETA. It just dawned on me, I have not recognized our fine colleague from Georgia, Mr. Gingrich.

Mr. GINGRICH. Thank you. I apologize for running late, and I wanted to let my colleagues who'd been here earlier and had heard your full testimony, ask you questions and give me a chance to catch up, read your testimony, and with the Chair's indulgence, I'd like to walk through a couple of things. I always appreciate your testimony and your candor.

First of all, and you cover a little bit of this on page 2, but when you discuss safety, is it possible in your judgment to distinguish the air traffic control aspects of aviation from the airplane and pilot licensing and certification aspects?

Mr. BURNETT. Yes. I think there is a distinction there. And we understand that at the Safety Board very well, because when we work with the FAA in an area in which we have an air traffic control issue, it's a much more difficult job working with them in that aspect, than it is when we are dealing with some of their other regulatory responsibilities.

Mr. GINGRICH. Why is that?

Mr. BURNETT. Because they have that liability concern there, and they become much more defensive. The best argument for separating air traffic control out in an independent authority is so that you would have genuine oversight on the part of the FAA of that authority.

Mr. GINGRICH. So what you would do in fact, is—what one might do—I'm not going to put these words in your mouth, unless you decide to jump at them, but that you have the possibility of a genuinely privatized or independent and liable agency which manages the daily functioning of airplanes, which would then have a traditional FAA regulatory oversight capability which is still in the Government watching to make sure that they were doing their job?

Mr. BURNETT. I think that there would be—as far as that goes, that there would be some positive value to that move. Now, I don't know whether you were here when I expressed the reservations I have about the authority being the fact that in the course of the transfer to that, the kind of management glitches that you might have on a system that I regard as already stressed might be dangerous, and I think we have to be very careful how we did that.

Mr. GINGRICH. I want to revisit that in just a minute.

Let me ask you, second, on page 2 you talk about the whole concern about cabinet-level entity being more susceptible to public pressure, and I want to follow-up on Mr. Ballenger's question. Do you know, as I understand it, there are some British commercial airports that are purely privately operated now, they have privatized, is that correct?

Mr. BURNETT. Well, I don't know. I think there's been a—they've been considering that, I know, in Canada, privatization, but if they've done that Britain I'm not aware of it.

Mr. GINGRICH. Has anybody privatized an air traffic control system that you know of, or are all the air traffic control systems in the world government?

Mr. BURNETT. As far as I know, of course you know, there's been some privatization of individual facilities here, but as far as a system of privatization, I'm not aware of it. Although, I certainly wouldn't want that to be taken as testimony that there are none.

Mr. GINGRICH. OK.

On page 3, and you come back to this again on—no, I guess you do it all on page 3. You talk about the FAA Administrator, of the slowness in responding to the inspector staffing problem. To what degree is that an FAA problem, and to what degree is that an Office of Management and Budget problem?

Mr. BURNETT. Well, that's again, you know, we may be unfair to the FAA in talking about that, because to the extent that they decreased their inspectors, I doubt that that was an FAA idea, that in some way it was something that they viewed as something that had to happen. And perhaps the decision as to where they cut within their organization, the FAA had something to do with.

Mr. GINGRICH. Well, the reason——

Mr. BURNETT. On the other hand, I think I very much am afraid that without the intervention of the Secretary, that would not have come back as quickly as it did.

Mr. GINGRICH. But isn't that circular in the sense that as long as you are a Government agency directly responsive to OMB, then you've got to have a very strong political factor capable of intervening at OMB?

Mr. BURNETT. Yes; that, I think is a good point, is that in order to deal—the Secretary of Transportation is theoretically on the level actually as the senior to the head of the Office of Management and Budget. And I'm head of an independent agency, I know I'm not. So that's a very good advantage, I think they have, and I think it's been put to use several times since I've been at the Board.

Mr. GINGRICH. But again, then doesn't—and I'm not trying to pick a fight with you, but I'm trying to explore for a minute to get on the public record the way the Government really operates. Isn't your final line on page 3, where you say, now it can be argued that the Secretary did not respond to the need until the issue became a public embarrassment, isn't it almost guaranteed that in a period of declining budgets, that cabinet secretaries will focus only on the pain which is loud enough that they have to?

Mr. BURNETT. Oh, yes.

Mr. GINGRICH. Because there are so many options for using up their limited resources with the President.

Mr. BURNETT. I think it's the fact that high visibility, the high visibility issues are the ones that are going to get attention over there, and I would readily admit that one of the things that we do at the Safety Board is make issues highly visible. And so therefore, from our perspective, some of the value of having DOT oversight is that we can, you know, we know how to get issues out and above the FAA bureaucracy and into the DOT and get them resolved there. And that seems, to us, to have been of value. And that's part of the reason for our concern.

Mr. GINGRICH. But in that sense it's very often almost a yard stick that a good cabinet officer will have, to see how hot the water gets so that it's time to move, and if the water isn't quite hot enough, of all the other ways they can spend their credit that week, they'll look for the hottest tub, if you will, to solve a problem, because they've got many different constituencies screaming at them for resources. I mean, is that a fair comment on what you've seen?

Mr. BURNETT. I suspect that that's true.

Mr. GINGRICH. Not desirable, but reality.

Mr. BURNETT. Although I haven't been able to see that from the inside, I can only suspect that that's true.

Mr. GINGRICH. As some people say, without any reference, of course, to Mr. Mineta, just like politicians see the light when they feel the heat, and I think that—but I'm also suggesting it because it's important for us as citizens to learn this model, that you now have a system of shrinking resources where in fact, if you want them to move, raising the heat may be more important than rationality.

Mr. BURNETT. Well——

Mr. GINGRICH. Maybe a rationale system at a larger level.

Mr. BURNETT. I think in all Government policymaking, rationality is—the attempt to get a rationale system alludes us.

Mr. GINGRICH. Yes.

Also on page 3, one last question. You do refer here to the question of the quality of inspections being in question during that period.

Do you have any concern today, as you know we have one extraordinary inspection process going on—are you confident of the quality of the FAA inspection system today?

Mr. BURNETT. No, I'm not.

I do believe that when we—I mentioned Pickneyville accident. After our team came back from that accident, we alerted the FAA to problems that we saw with their surveillance out there. They sent in a team, and then later a team that they call a blue ribbon team, and didn't find any problems. And it wasn't until we held a public hearing that they admitted that they had problems. At that point the Secretary of Transportation stepped in and instituted the NATI inspections, which didn't cure the problems with FAA surveillance, but they did winnow out a lot of problems with some individual airlines, and they closed some down. I think that was a positive step.

The FAA also, under that pressure, has been in the process of designing a system that is supposed to work better as far as surveillance, and we are pleased with the effort. But it's not there yet. We have at least two investigations right now, Aloha and the Ryan Air investigation in Alaska, where I think we have—and all I want to say is issues of FAA surveillance. We're not coming to conclusions yet, and I think we've got an obligation not to do that.

Mr. GINGRICH. Well, if you were the flying public, or if you were the Congress, and you were looking, for example, to take a case that the Texas Air/Eastern/Continental inspections going on right now, would you be concerned that they may not be as thorough as you would hope for given what your concerns are about Aloha and Ryan?

Mr. BURNETT. Well, you know, one thing I've observed, and I've only had access, again, to press reports of that surveillance, but the numbers that have been given have been, I think, a 7 percent on Eastern, 7 percent of the planes taken out of service, on Continental 3 percent. There's been a lot of argument, well that's really good. It would happen on any, but I think there is a significant difference in 7 and 3.

Now, I'm not sure whether it's the fact that Eastern was not in as good a shape as Continental, or that different standards were applied by the people who were surveiling Continental than were surveiling Eastern, and Continental got off lighter. And that raises all kinds of questions in my mind that I don't have answers for, but I think those questions need to be pursued.

Mr. GINGRICH. Well, that carries me to another question I was going to ask you about for a second, which is that the FAA began a reorganization in which power will be taken away from the FAA regional directors and centralized more here in Washington. Are you concerned about the notion that each region sort of has its own standard?

Mr. BURNETT. Yes, we've expressed that in several investigations. I think where you have a national competition among air carriers, you've got to have consistency in the standards. And for that reason I believe that that's probably a positive move, but as I said, probably has some drawbacks to it too.

Mr. GINGRICH. In looking at this whole area, somebody had asked me the question whether or not one of the reasons for the decrease in mid-air collisions was because pilots were deliberately simply not reporting them. Are you at all concerned about that sort of collusion?

Mr. BURNETT. Well, we've always been concerned that that is a very subjective system. Unfortunately, right now it's one of the best measures we have.

For one thing, when you rely on pilot reporting, some of the most critical near mid-air collisions may be in IFR conditions, instrument meteorological conditions, and nobody sees them, the other airplane out there then. And then we get to the situation where it's possible because, for instance, all the pressure that we put on for limiting traffic because of the number of near mid-air collisions, may cause the air carriers to sort of encourage their pilots not to report them. Now, I don't know that that's happening. But it's something that could be conjectured.

Mr. GINGRICH. Do you think, even if it is happening, do you think it's any worse than it was 5 years ago? Do you think there's any cultural change in that sense?

Mr. BURNETT. The one thing I do think is that immediately after the strike, I think there was a very pro working controller attitude on the part of flight crews. And I believe, but it cannot be proven, that there was low reporting then, so that to the extent that the numbers we have in 1982 were probably not a good base for what was happening in 1982. I have not been able to explain why the comparisons between 1984, 1985, and 1986, why there would have been such a big increase. But there are those who argue that just because the near mid-air collision issue was getting a lot of attention, that that made people more sensitive to it, and therefore more apt to say, that the plane out there that they saw was closer—and represented a greater threat.

Mr. GINGRICH. Let me ask you, on page 4, you make the point that Congress, the NTSB, the Department of Transportation, have all worked together on oversight and review. If we went to an FAA regulatory function, and an independent ATC, air traffic control system, would you feel comfortable that the routine pressures on the FAA, that is again, Congress, et cetera, would keep the FAA focused on its safety function of oversight?

Mr. BURNETT. I think you're needing less pressure to do it, because I think they would be out of that defensive posture that they have now, that they adopt——

Mr. GINGRICH. So you might actually increase safety activities?

Mr. BURNETT. I think that might be a very positive step.

Mr. GINGRICH. OK.

One or two last questions, and I appreciate the chairman indulging me.

You express concern that an independent FAA faces the prospect of being left out in the cold at budget time unless it has Cabinet-level representation at OMB. The question I would ask is, if you have in independent air traffic control system outside the system, and if you were to go to a capital budget for the trust fund, so they were making capital allocations outside the annual operating budget, wouldn't that pretty much eliminate your concern?

Mr. BURNETT. Well, it would perhaps as far as controllers are concerned, but it wouldn't as far as inspectors, and as far as resources we need for the surveillance system.

Mr. GINGRICH. Do you think you have a significantly—in other words, you're an independent agency, aren't you?

Mr. BURNETT. Yes.

Mr. GINGRICH. You report directly to OMB without anyone protecting you?

Mr. BURNETT. Well, we are one of—I think one or two agencies that have the luxury of the law requiring us to submit any reports that we make to OMB, any requests that we make to OMB, also to the Congress.

Mr. GINGRICH. Well, should we also then—should that be a requirement we look at if we change FAA's characteristics?

Mr. BURNETT. Well, I think we find it to be an advantage, because then we don't have to go through this charade of saying that we didn't ask OMB for what everybody knows we asked them for.

Mr. GINGRICH. Sure. I mean, you sort of hit the Administrator earlier, in your testimony, in a way that was a little unfair in that any Administrator who doesn't resign is by definition going to spout the party line.

Mr. BURNETT. Oh, no. I don't think so. If that implication was drawn from my statement, I don't recall anything in there that I've regarded as having said that, but I apologize for it——

Mr. GINGRICH. I can tell you. It was page 3, you make the point that in the second paragraph, the FAA Administrator insisted that additional inspectors were not needed. I mean, isn't he, in fact, almost obligated if he goes to OMB and loses the fight to then be able to either argue that he has enough inspectors, or that he resigns?

Mr. BURNETT. Well, I'm not sure why he did that. I'm not sure whether that was because he knew he was going to have to take some cuts, and he preferred to take them there, or whether it was because he was told this is where you're going to take the cuts, and was loyal to some higher authority, or whether it was because he was motivated by the fact that he didn't want to over surveil the industry.

Mr. MINETA. Would the gentleman yield on that point?

Mr. GINGRICH. Of course.

Mr. MINETA. Someone may correct me, but historically, as I recall back to that time period, it seems to me that at that point Mr. Helms was trying to implement his RBOs, regulations-by-objective proposal. That was a proposal in which the FAA would say, "Industry you go ahead, and we won't have any regulations, except some broad objectives, and then if something happens, then we'll look at that situation at that time. But in the meantime what we can do is lower the number of inspectors." In fact, he was advocating combining general aviation inspectors and commercial aviation inspectors, which we thought was really off the wall, because there would be an inspector looking at a Cessna 150, and then walking across the field and looking at a DC 10 the next minute.

Mr. BURNETT. Most of that happened before my time. By the time I came in the regulation by objective was sort of being——

Mr. MINETA. And I think that was part of——

Mr. GINGRICH. If I might comment, I've just been briefed by staff, and I was just wrong. The period you're referring to was a clear policy fight in which the Administrator at that time had a policy view, as the Chairman so clearly stated it. I was just wrong in my question, so I apologize for any suggestion that you were leading us astray.

One last question. You touched on something which Admiral Engen really got my attention on, and which sobered me up a lot, and that is the notion that the air traffic control system, unlike almost anything else in American society, has to work 100 percent, 24 hours a day, 365 days a year, and does. It's one of the great miracles that we tend not to pay attention to, that routinely all day, every day, it just works. It's really one of the greatest achievements of this culture, that we've been able to build this system so magnificently.

You do raise the question of what an interim period of adjustment and upheaval during a period of tremendous stress would be like. I'm very concerned, representing as I do, a considerable number of controllers at the Hampton Center and at the airport in Atlanta, that we find a way to ensure that any discussion of privatization, any discussion of anything that's significant change, start with really thorough involvement of the controllers, so that they have a feeling of security and comfort, and it meets their interest, and they feel frankly, that they're among the winners, that their lives will be better for having this new approach.

Do you have any general advice and caution to the airlines industry, to the general aviation people, to all those folks out here that—to the conservatives who are interested in privatization for ideological reasons, any thoughts on your side as to how one could structure that kind of a transition to minimize any dangers to it has to be 100 percent, 24 hour a day, ongoing system?

Mr. BURNETT. Well, no I don't think that I can add a lot to how it ought to be done, except I agree with you very much that one of the dangers of that system is that if you carried this thing out in a way that damaged controller morale, that that would be very dangerous. I think that it has to be done, any kind of major change in that system, has to be done with sensitivity to the attitudes of the controllers. That's one of the concerns, I suppose I had when that issue was first raised by the Air Transport Association, was that it seemed to be overly concerned with how you would recruit senior executives, and not sufficiently concerned on what kind of impact it was going to have on the working controller. And I, frankly, had a bad taste in my mouth when this issue first came up, because of that, although I think, conceptually, I can see some advantages to moving forward with that kind of program if it was carefully done.

Mr. GINGRICH. Let me just close by saying that I really appreciate the job you do and the aggressiveness and concern you show for safety, and I want to commend you, and I appreciate your sharing your expertise with us this morning. I think you've really helped us begin a building block of thinking this thing through.

Thank you.

Mr. BURNETT. Thank you.

Mr. MINETA. Thank you very much, Mr. Gingrich.

Thank you very much, Mr. Chairman, and I'd like to associate myself with the remarks of our colleague, Mr. Gingrich, about the job you are doing.

Mr. BURNETT. Mr. Chairman, again, we appreciate this committee's concern with aviation safety and the support you've given to many of the vital issues that the Safety Board raises. Thank you.

[Mr. Burnett's prepared testimony follows:]

National Transportation Safety Board
Washington, D.C. 20594

Safety Information

Testimony of
Jim Burnett, Chairman
National Transportation Safety Board
before the
Subcommittee on Aviation
Committee on Public Works and Transportation
House of Representatives
Regarding
Improving the Effectiveness of the
Federal Aviation Administration

June 2, 1988

Mr. Chairman, Members of the Committee, I appreciate this opportunity to appear before you to discuss various proposals to reorganize the Federal Aviation Administration (FAA). I think the discussions taking place in both bodies of Congress and within the government and industry are necessary and constructive. I commend you for holding these hearings to seek additional information on changes needed to permit the FAA to function more effectively.

Before going any further, I want to point out that the Board has not taken a position on FAA reorganization, so the views expressed in the testimony are my own.

We all agree that there are problems in the aviation system -- unprecedented traffic growth, outdated equipment, controller staffing and insufficient landing slots and runways. Add to these concerns the crescendo of passenger complaints regarding cancelled flights, poor on-time performance, loss of baggage and overall bad service, and it is easy to understand why there is such a focus on improved efficiency.

While I am sympathetic to the concerns that the FAA's structure and the general authority under which it operates may prevent responsive and innovative solutions to problems, my concerns are centered on the FAA's ability to regulate the aviation system safely.

In that regard, I want to focus my testimony on recent proposals to separate the FAA from the Department of Transportation (DOT), a move that, in my opinion, will not solve the administrative problems within the FAA and could potentially run the risk of reducing safety oversight.

I have listened with great interest to the arguments for taking the FAA out of DOT, and they seem to boil down to two basic points:

The DOT Secretary's interference in technical matters causes undue delay in many instances, and sometimes results in actions not being taken that should be; and

Secondly, the governmental process of funding and procurement is cumbersome and severely limits the FAA's ability to adapt to a dynamic technological environment.

To the first point, I would have to agree that DOT does, indeed, interfere in FAA internal matters and causes some delays. And I do not question that there are times when that interference is not helpful. It should be noted that the Office of Management and Budget (OMB) causes its share of delays as well, and these are often blamed on the Department.

I would submit, however, that an "over-the-shoulder" review of FAA actions by an accountable entity is a good thing overall. My six years at the Board -- overlapping the tenures of three Transportation Secretaries and three FAA Administrators -- have convinced me that the frustration of delays and interference in FAA decisionmaking are vastly outweighed by the significant safety achievements we have been able to realize through a Cabinet-level entity more susceptible to public pressure. And from where I sit, safety concerns must be paramount.

Let me give you an example. Following airline deregulation in 1978, as predicted, many new carriers entered the industry while existing carriers expanded rapidly to meet demand. At a time when the industry began to reorganize, the FAA -- in the face of warnings from the Safety Board, the Congress and others -- did not increase inspector staffing significantly until 1984.

Indeed, prior to the implementation of deregulation, the FAA Administrator insisted that additional inspectors were not needed.

And even when the inspection force was increased, the quality of inspections was in question. This point was driven home during a 1983 Safety Board investigation of a commuter accident near Pickneyville, Illinois. Evidence gathered in a public hearing revealed woefully inadequate FAA surveillance activities. Subsequently, the Secretary announced a series of actions to address these and other safety issues.

According to an April 1987 General Accounting Office (GAO) report to the Congress, "Today FAA is revamping its program as a result of actions launched by the Secretary in 1984. The Secretary's initiatives resulted in an FAA plan to overhaul program operations and the decision, announced in September 1985, to substantially increase program staff."

Now, it can be argued that the Secretary did not respond to the need until the issue became a public embarrassment.

But even for those who take that position, the point remains that the FAA, on its own, neither recognized nor attempted to correct major deficiencies in its system designed to protect passenger safety.

I do not want to belabor the point, but there is also the matter of political clout at budget time. Assuming a quiet year in aviation and a major budget crunch, an independent FAA faces the prospect of being left out in the cold in the absence of Cabinet-level representation at OMB.

My intent here is not to discredit the FAA. It is an agency of dedicated people with a vital mission. The FAA has presided over the safest, most complex aviation system in the world.

But it has not accomplished this without help: the Congress, the NTSB -- and the Department of Transportation. A combination of oversight and review that works -- not always efficiently -- but effectively.

The FAA is a technical organization. The agency head generally has a background either in the aviation industry or military aviation. On the other hand, the Department of Transportation is not burdened with an industry perspective.

I believe those offsetting approaches appropriately balance the needs of the industry with those of the public.

It is not coincidental that the proposal to separate the FAA from the DOT is enthusiastically supported by the aviation special interests.

An independent FAA might be good for the industry -- creating the equivalent of an "industry relief bill." But I believe it could be detrimental to the safety of the traveling public.

So, what are the relevant concerns? I believe they are contained in the second argument for an independent FAA: cumbersome procurement procedures, unstable long-term funding arrangements and inflexible staff compensation systems. While the Safety Board's program does not involve major procurements, as a small technical agency, I know only too well the difficulties of effective program management and long-term planning in the face of constantly fluctuating and uncertain funding levels. I also understand and share the increasingly serious problem of attempting to recruit and retain highly qualified staff under the current government personnel system. However, the need to find effective and equitable solutions to these problems remains if the FAA is to be able to keep up with record growth.

I do not pretend to have all the answers, but I am convinced that you are asking the right questions.

Mr. Chairman, that concludes my testimony, and I would be pleased to respond to questions.

Mr. MINETA. Thank you very much.

At this point the Subcommittee will recess and reconvene at 2 o'clock.

[Whereupon, at 12:45 p.m., the subcommittee recessed to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Mr. MINETA. The Subcommittee on Aviation will please come to order.

At this time I'd like to ask Ms. Edith Page, the Project Director from the Office of Technology Assessment to come forward.

Ms. Page, your testimony will be made a part of the record, and so you may go ahead and proceed in your own fashion. It's good to have you here.

We seem to utilize your talents here at Public Works and Transportation quite a bit, including the Subcommittee on Investigations and Oversight.

Ms. PAGE. The work is hard at OTA in Transportation, Mr. Chairman.

Mr. MINETA. Right.

TESTIMONY OF EDITH B. PAGE, PROJECT DIRECTOR, OFFICE OF TECHNOLOGY ASSESSMENT

Ms. PAGE. It's a pleasure to be here today. OTA recently completed work on a report requested by this subcommittee, entitled Safe Skies for Tomorrow: Aviation Safety in a Competitive Environment. The report is now in press, and we fervently hope it will be ready for release soon.

At this point, Mr. Chairman, with your permission, I'll digress a little bit from my written testimony and follow up on something that was discussed this morning. I have something to add from the full report that may be of interest to the committee, related to near mid-air collisions.

OTA evaluated the numbers of near mid-air collisions in both the FAA database and the ASRS, the NASA database. We then tracked those near mid-air collisions, their numbers and the increase in them, with the increase in commercial tower operations, over the past 8 to 10 years, since deregulation, basically. There is a very close correlation, between the increase in the number of near mid-air collisions, and the increase in commercial tower operations. We suspect then, that it is possible that the number of near mid-air collisions is a function of the density of traffic.

One of the reasons for the decline in the past year may be that commercial tower operations have declined somewhat, as mergers have taken hold. For example, the number of flights in and out of Detroit and St. Louis have been reduced as Ozark and TWA folded their flights together, Continental has canceled some of its flights, and Northwest and Republic have merged. So it may be a positive thing to look at near mid-airs as a function of traffic density.

This means we need to continue to worry about them, and ensure that that traffic gets handled safely. But as to the increases and decreases in near midair collisions it may be productive to look at them as a function of traffic density.

On to the testimony for today. During times of major industry change, vigorous Federal safety programs and oversight are vital to ensuring safety. OTA found, as many other groups have, that FAA, hard hit by budget cuts and personnel reductions, has fallen behind in numbers of staff and levels of technical expertise. Today I will focus on FAA's difficulties, ways to overcome them, and how to help the agency function more effectively.

FAA's dual mandate, to promote safety of flight and to encourage the development of air commerce, does create an inherent tension in two FAA tasks: inspections and managing and operating air traffic control. At times the duality presents the agency with unavoidable conflicts. The pressure of airline schedules bunched at peak hours on the air traffic system is one obvious example.

In addition, OTA found that many FAA safety functions need strengthening. Among the most important are raising inspector, air traffic control, and technician personnel levels, near-term improvements to air traffic control equipment, developing analytic tools for managing airport and air space demand, upgrading training programs of all types, safety data analysis programs and tracking systems, long range system planning, and hazard and human factors analyses for new technologies. That's a formidable list indeed. Funding resources needed for these functions are summarized in figure 1 of my written testimony.

Many of FAA's problems have their roots in the bureaucratic culture and are characteristic of most Federal agencies. The lack of autonomy over personnel, procurement processes, and budget decisions and inability to adapt quickly to change are not problems unique to FAA and will exist regardless of the agency's position in the Government. Undeniably, over the past decade FAA's effectiveness has been undercut by policy decisions carried out by DOT and by National budget constraints entirely external to FAA activities. These have slowed regulatory and procurement processes, eliminated expert personnel who sought more rewarding jobs elsewhere, and prevented modernizing equipment.

OTA found general agreement about the shortcomings of FAA. However, proposals for reform vary widely, ranging from debate over the length of the Administrator's term, through the policymaking relationship between DOT and FAA, and on to the status of ATC functions and how to use the trust fund. The frustrations underlying these proposals have two principal sources; overall administration policy, and internal FAA management problems. Removing FAA from DOT may not address either the frustrations or their sources.

Frequent turnover of Federal administrators works against independent decisionmaking and long range plans and programs in every agency, and FAA is no exception. OTA concluded that FAA operations and regulatory and oversight processes could improve markedly with strong, independent, and consistent leadership by the Administrator. Three changes could help reach this goal. First, explicitly establishing the safety function as preeminent for the Administrator, and allocating stable, adequate funding. Second, streamlining the structure of FAA to give the Administrator direct control of the far-flung organization and permit him or her to hold subordinates accountable for system safety. Finally the Administrator's tenure could be increased to a fixed term of up to 5 years. To ensure accountability, the Administrator could be required to develop a rolling 5-year agency development plan and report annually on it to Congress.

Most of these goals could be accomplished through changes to policies and some amendments to existing legislation. For example, to ensure that the responsibility for air safety remains with the Administrator rather than being assumed by the Secretary of Transportation, section 1655 of title 49 could be amended to vest those responsibilities in the Administrator, rather than having him exercise them on behalf of the Secretary. However, streamlining the structure of FAA is a management responsibility of the Administrator. Internal FAA turf battles not withstanding, this must and can be done soon. Changes to training programs, planning activities, and data capabilities can all be made from within by an Administrator who is also a seasoned, skilled manager accustomed to controling a large, bureaucratic, technical organization. We are well aware that such individuals are hard to find.

A willingness on the Administrator's part to experiment with different methods of personnel and procurement management could modify the most severe effects of civil service and procurement requirements. For example, the maximum age for hiring air traffic controllers could be raised from 40 to 45, to permit tapping the pool of retiring military controllers. Additional flexibility for cost of living differentials could be arranged for controllers, inspectors, managers, and technicians to meet some of the pay disincentives that currently discourage personnel relocations in all of those fields. A Navy experiment with grouping GS levels for technical personnel to allow flexible promotions could be tried. FAA could enhance its technical expertise by better use of existing resources at NASA and NTSB. Finally, recent successful deployment of the host computer system only six months behind the original schedule is a clear signal that lengthy procurement delays need not be inevitable.

The role of FAA in making policy poses different concerns. For example, airport and air traffic control issues create tension for FAA between ensuring maximum traffic flow, on the one hand, and meeting safety standards and environmental and land use concerns on the other. Decisions about managing air and ground space have serious equity and access impacts that extend beyond the aviation community. These must be decided through open debate with an underpinning of technical analysis. FAA can provide the analysis, but it is not an agency well-suited to weighing all aspects of such divisive issues.

Although many in the aviation community find DOT intrusive and overly political, DOT does provide a valuable policy viewpoint to balance FAA's technical perspective.

As Congress considers ways to address dilemmas associated with FAA, let us remember that separating FAA from DOT involves major surgery. The recuperation period may demonstrate that the surgery changed the institutional framework, but did not cure the fundamental ailments. The NAS Plan, the most forward looking FAA modernization plan and program in years, was conceived and established under a DOT Secretary and an FAA Administrator working as part of the same institutional framework and as part of the same administration that are now being identified as the reason surgery is needed. It is important to consider carefully how to address the causes of the illness rather than just the symptoms.

Finally, I want to acknowledge that the issues under discussion today are easy to complain about, but difficult to resolve. OTA is pleased to have played a role in clarifying the issues, and stands ready to assist further as appropriate to continue the Federal commitment to air safety.

Thank you. I'll be glad to answer questions, sir.

Mr. MINETA. Thank you very much, Ms. Page. That was a very complete and very fine statement.

I believe it would be useful to the subcommittee if you would describe the OTA report process, and especially as to who's involved, who are your advisors, and how is the report cleared for publication. To describe this process, could you provide a brief outline of how you developed your report on Safe Skies for Tomorrow.

Ms. PAGE. I'd be happy to.

OTA processes are fairly well set out in our authorizing legislation. The letters of request must come from a standing committee. They must have signatures by, or the support of, the chairman and the ranking minority member. As part of each project we work closely with the committee staff to delineate and define the issues and ensure that what we are doing is appropriate and will meet the needs of the Congress.

An advisory panel is established for each project. It includes representatives of all the parties at interest, including industry. There will be representatives of State and local jurisdictions. In the case of this study, the airport operators, port authorities, representatives of the manufacturers, the airlines, citizens groups, were included in as wide a spectrum as we could think of. If Congress is likely to hear from a group, we need to have them as part of our advisory process.

We also hold workshops on specific areas of the subject at hand. In this case we held two, one on technologies and one on human factors. We bring in as wide a variety of experts in those fields as we can, and we always include citizens, concerned citizens and public groups, as well.

Each part of the report is reviewed by all the people who have participated in the process of assembling it, that is, all the members of the advisory panel, all the experts that have been called in as part of the workshop. The report is sent to the executive branch agency that is under scrutiny, for their comment, and we tap their expertise heavily.

However, unlike GAO, we are not required to incorporate, or address or respond to the executive branch agency comments. I think, Mr. Chairman, what you really wanted to establish is that we have tapped a very wide variety of resources for this, and I hope that I have given you some outline of that. If you have a further question about it, I'd be happy to address it.

Mr. MINETA. Is there something like, let's say, after you prepare your report, is there something like an exit interview or something of that nature, where the agency would have a chance to rebut, maybe, some of the things that may be in the report?

Ms. PAGE. Well, yes.

Mr. MINETA. Or is that something that goes along?

Ms. PAGE. It is part of each process. Generally speaking, we have three separate steps. The first is the initial investigation, or initial research, then we develop a preliminary draft, and at that time the agency looks at what we have drafted, as do all the advisory panels and workshop members. We take their comments, incorporate them, and then prepare a final draft. The agency comments on that as do all the industry and public groups that have participated in the process all along. It is a very widespread review process.

We have found that by working with the executive branch agency over the entire course of a study, and being perfectly frank with them about what we're finding, that they often after an initial defensive response, begin to say, well you may have a point there, maybe we better start looking at that and working on it differently. And from my perspective, that's just fine. My goal is to have the changes brought about, and complete the reforms rather than to take a stand in a confrontational manner.

Mr. MINETA. Now, with respect to FAA's dual mandate to regulate safety while fostering air commerce, you cite the pressures of airline schedules bunched at peak hours as an example of a situation in which FAA would be faced with a conflict. Is there any evidence that this conflict has diminished safety, and can you provide other examples of situations in which there is a conflict between FAA's safety and promotional role?

Ms. PAGE. Yes, I can.

I appreciate your asking a question about that particular issue. Some of the evidence that we acquired, on which we base that statement, came from interviews with air traffic controllers in the field, particularly at airports where there are a very heavy number of flights. If there are delays in parts of the system, and they know that they have a great many planes in the sky, they feel a tremendous amount of pressure to feed them in, to pump them in, or pump them out, as fast as they can to minimize the particular delays at their facility.

This is not a subject that is addressed directly with any enthusiasm at FAA headquarters. They will tell you that this is not a problem, that the standards that they have set create the framework in which this system should operate like clockwork, and that the number of landings per hour—and take-offs—does not exceed the limit.

We heard from air traffic controllers in the facilities that they feel a tremendous amount of pressure to, in fact, move them through faster if there are backed-up and delays. I would not say that that has been a cause of crashes. There is not evidence that such is the case. In the sense that it is an additional contributor to the traffic density that we were discussing earlier, the potential exists however.

The other place where we did hear, again from personnel at the working level in FAA, of desire or a place where a conflict exists, is in the inspections. Particularly with the commuter lines, where an airline is struggling, there is incentive or a desire on the part of an inspector to encourage and help that airline do a better job. Now there's a fine line between encouraging them to do a better job or help them succeed by approving a training program or the procedures subject to FAA inspection, so that they can continue to do business and increase their role in commerce, and on the other hand maintaining FAA standards, that as we have heard discussed previously today, have not been uniform across the country.

I hope that was clear. It's a very complicated issue.

Mr. MINETA. Let's just take that example of the number of operations per hour. Yesterday Mr. McArtor spoke at the International Aviation Club and said that maybe we should be doing things that are going to improve the capacity of the system more from a technological standpoint, instead of an air traffic controller talking to the pilot. Maybe we have to be using some kind of a satellite datalink system.

Ms. PAGE. Right.

Mr. MINETA. So instead of voice communication, there is a printer on board that is saying something to the pilot and flight deck crew. Now, are those kinds of ideas that someone may have and say, what about trying this, "or" have we thought about that. Is there an environment that allows that to bubble up, or is that sort of suppressed? Or suppose someone from the outside comes to FAA and says, "say, what about doing something like this," and they'll say "well, what does he know about air traffic control." And I hear this, if FAA didn't think it up, it ain't no good. I hear progress is painfully slow. And that innovation is very difficult.

I mean here we are in 1988, we're just getting to the point of solid state equipment at FAA, which is really a high technology type of an agency, and yet they're the largest purchaser of vacuum tubes. What is it that sort of suppresses, or doesn't allow this innovation to bubble up or advance more quickly?

Ms. PAGE. There are many reasons for it. It's one of the complexities that I was trying to give a generality about when I said the level of technical expertise is not sufficient.

The FAA is an operating agency, and their responsibility is to complete those operations safely. They have done a spectacularly good job at that. They have taken that part of their responsibility so seriously, and correctly so, that I would say that the parts of their organization that deal with technological innovation and advances have been hard pressed to maintain the levels of expertise that allow and encourage receptivity to new ideas.

In addition, once a plan is developed, or conceived, all of us oversight agencies, Congress included, and different committees, take the perspective that FAA needs a plan, you need to set milestones, and we want to hold you accountable for meeting those milestones. In the zeal to reach the end goal, FAA does not plan ahead particularly well. They do not allow, always, sufficient time for developing a new technical system. They don't have in-house certainly, a real interest and expertise in how the new technologies will affect the human factors, the human beings who are going to be operating the technology.

All of these things they need to do more of. There is expertise available and if FAA were somewhat more receptive to new ideas, and perhaps somewhat less intent on meeting the milestones that have been set rather arbitrarily so they accomplish a program, they could allow for greater operational testing. If they made a mistake, at the developmental stage, and we said it's all right to go on and do it a different way if that will work better, it's possible we would achieve some of the technological improvements that Mr. McArtor was talking about. And that I think can be achieved, and is an important goal to pursue. In other words, we can increase the capacity of the existing system. Some of that increase in capacity may have to come from changes in the way industry operates. They, after all, have chosen those hubs, and when you have a hub where 60 percent of the people don't even want to go that hub, they want to get some place else, industry could be encouraged to relocate some of their flights and choose a secondary hub where they would also be able to capture a large share of the origin/destination market, and relieve some of those heavily used airports.

Mr. MINETA. Even in that kind of a situation, is the FAA able to react quickly enough to shift their personnel when the industry changes their hub from point A to point B, or when they expand the number of hubs.

Ms. PAGE. No.

Mr. MINETA. Maybe the FAA needs a larger inspection work force located at a different local?

Ms. PAGE. No, they are not able to shift their personnal quickly. A major finding of our report was that they have been, for a variety of reasons, very slow to respond to these changes.

Mr. MINETA. Now, is it that they are slow, or is it that the procedure for being able to move people is a systemic problem? Is the systemic problem that slows it down greater than just the bureaucratic culture of the FAA?

Ms. PAGE. I'm not quite sure what you're referring to when you say a systemic problem?

Mr. MINETA. Well, is it——

Ms. PAGE. Are you talking about personnel?

Mr. MINETA. Is it OPM rules or is it the bureaucratic culture of the FAA?

Ms. PAGE. It's some of both. OPM does have a developmental program, an experimental program for controllers, that will perhaps provide greater flexibility in this relocation. But every Federal agency is reactive in nature. In this particular case, with FAA, industry has always led the way. They have acted and FAA has reacted.

Excuse me, not every case. There are times, especially with new technologies, TCAS is an example, and the ground proximity warning system is another, where FAA has acted as the forcing mechanism to require a new technology, and there have been good results. Our accident analysis shows that when FAA has bitten the bullet and made a new safety requirement there have been drops in the accidents. I believe you have a copy of the summary.

Mr. MINETA. Even in those examples of the FAA mandating those requirements that only occurred after the receptivity on the part of industry was already recognized.

Ms. PAGE. Absolutely.

Mr. MINETA. We've had Members of Congress here, one who has retired, say, "yeah, I remember talking about that 12 years ago."

Ms. PAGE. You're absolutely correct. And it hasn't been mentioned today, but I do want to say that I think Congress plays an indispensible role in this process. You are the generators—you are the focusing mechanism for the public concern. And you put the pressure on both DOT and FAA, and it is often the case that things don't get done until that pressure is applied to such a degree that they cave, basically. And I think we've seen several examples of that over the past four or five years.

Mr. MINETA. Thank you, Ms. Page.

Mr. Gingrich.

Mr. GINGRICH. Thank you, Mr. Chairman.

Thank you very much for coming and testifying today. I have a number of questions I want to ask you.

Looking at your testimony, on page 2, I have a couple of questions. First of all, and I agree strongly on your point about the bureaucratic culture. You refer, both on page 2 and on later pages to the problem that you have a high tech, real time agency whose personnel and procurement processes are set by generic Government standards that are designed for a much slower, lower level of technical skill, and lower level of daily real time accountability. Have you looked at the possibility or the desirability of our designing specific procurement and personnel policies for this kind of an agency, and explicitly differentiating it from general civil service and the general process?

Ms. PAGE. Indirectly, yes. Directly, no.

We did compare it to NASA, which has some of those capabilities, some of those freedoms. They have a somewhat different procurement process, I believe, and I know they have a different personnel process. I could see it when I visited them, and the impact of it. That was the most direct comparison we made, because it seemed like the most relevant technical agency to look at. And there are some ways in which NASA has managed to achieve a higher level of technical expertise. However, I don't think any of us—after the past two or three years—would hold NASA up as a model of how to manage.

Mr. GINGRICH. It seems to me that NASA is less bad than, but is still not a model. [Laughter.]

There's been a self-imposed decay in our procurement and personnel abilities over the last 40 years that has been a remarkable impact on degrading our ability to apply technology to solve problems.

Ms. PAGE. I would agree with you. I think at FAA, however, the problems are somewhat more deep-seated than the procurement process itself. They really have to do with some of the things I was talking about when Mr. Mineta asked me the question, about the needing to meet these milestones and the fact that they don't have a depth and breadth of technical expertise that permits them to do a terrific job of designing a system.

They think—they appear to feel that operational testing, in-depth operational testing is something that shortcuts can be taken through. There isn't an opportunity built into developing a very complicated new system for sufficient testing, and I'm using the advanced automation system as an example. That's an entirely new system. There are going to be people reacting to it in different ways. They just don't have the expertise to do it.

Mr. GINGRICH. But if you're looking at—I mean this goes back to my general point about government. I mean, it seems to me that one of the arguments for privatizing large chunks of the Government, is that in its current form it can't work. That both in salary scale and in depth of experience, it's highly improbably that any institution the size of FAA is going to be able to take on something the size of NAS Plan with internal staff.

Ms. PAGE. That's correct.

I'm familiar with those arguments. I think there's some validity to them. I would submit, however, that there are relatively few private industries, or private firms that have that breadth and depth of expertise. And that's why you see this wide variety of people being brought in to be assistants, and the contracts that we have.

Mr. GINGRICH. I suspect, you might correct me if my memory's wrong, but I suspect that other than maybe going to the Moon, there is no non-defense Government project of technical skill comparable to the NAS Plan, ever undertaken, on the scale of the NAS Plan.

Ms. PAGE. I suspect you're right, and if there's another one, it isn't at the top of my mind.

Mr. GINGRICH. So you end up with a unique, very expensive, very large-scale ideally integrated with a systems architecture which was not done very well, was not done methodically.

Ms. PAGE. Right.

Mr. GINGRICH. And all I'm suggesting is that outside of the armed services where you tend to have four-star billets that have perquisites that make up for the salary, that a corporation attempting to undertake this would be paying its senior managers 5 or 6 or 10 times——

Ms. PAGE. No question about it.

Mr. GINGRICH. And that therefore, we set a—and I'm not saying this negatively about anybody who's currently at FAA, I'm just saying that in fact it is a tribute to the patriotism of the Federal civil service, that having now been encumbered with both personnel and procurement rules that are idiotic, it nonetheless at its mid-level and senior management levels attempts to persevere.

I'm curious, when OTA investigates and looks at these things, do you ever attempt to look at an unconstrained series of options, that is, where you look at—and I take the example, which I marked as I was reading your testimony earlier, on page 6 you say, a recent successful deployment of the Host computer system at air route traffic control centers is only 6 months behind the original schedule. And the note I made to myself is, but to what degree was the original schedule longer, and slower, and more cumbersome than would have been necessary with commonsense?

Ms. PAGE. On this particular project it was not significantly slower. There's a different direction you could take if you wanted to raise question about that particular statement. And that is that this was off-the-shelf technology, and what they did, and they did very well, was to develop the deployment program extremely well, and it has gone very smoothly. It was well thought out. I was pleased to find a program that had worked so well.

Mr. GINGRICH. And it was a direct transference——

Ms. PAGE. That's right.

Mr. GINGRICH. In choosing and acquiring that technology were they able to operate within about the same time frame as a reasonably large commercial corporation?

Ms. PAGE. Probably not. The budget cycle is so different, for example.

Mr. GINGRICH. That's what I'm asking you to go back and review at some point. I don't know that this is technically your zone, but I think it's very important.

My impression, I've been told by people at Georgia Tech—I'm not a computer person, I just taught history, but I've been told by information people that the Brooks Act guarantees that it's virtually impossible to procure in the generations available the computers you'd want to buy. That by the time you have defined them and gone through the paper work, you have to be buying an obsolescent system.

Ms. PAGE. That's certainly been the experience of the FAA.

Mr. GINGRICH. So my question would be, if there's a way at some point for OTA to ask the question, given the importance of information and other technologies to the early 21st century in this country, how would one rethink and rewrite procurement and personnel laws to maximize our access to qualified people, and to maximize the fluidity that an information age will require both in jobs and job descriptions, and in equipment? My guess is we come up with something radically different than what we've got now.

Ms. PAGE. It could quite well be. If you ask us, we'll make a good try.

Mr. GINGRICH. I would very much like to, at some point, talk to you or whoever I should there about it, because—and I'll get off this in one second, but I think it's very central to this question of looking at this system, and it raises the issue of privatizing the air traffic control part of this, because it does—one of things I've enjoyed having helped found the Military Reform Caucus, is that the FAA is actually small enough you can look at it.

Ms. PAGE. Yes.

Mr. GINGRICH. DOD is not. I mean DOD is so big, that nobody—maybe Mr. Carlucci can look at it because he's been around long enough, but as a general rule nobody has ever had enough information, high enough to understand DOD, and the three had all forgot it before they wrote anything. I mean, it's just an impossibly big system for us to understand.

FAA is actually a manageable size, fairly big system, and it might be useful to look at what would one do starting from scratch, rather than how would you modify and jury-rig the current structure.

Ms. PAGE. How we adopt innovations and new technologies in the Federal Government agencies, is a central issue, and I think it's a very important one, and we'd be glad to explore it.

Mr. GINGRICH. And I'll come back and ask you about that on another day.

Now let me ask you one or two specific questions about your very helpful testimony today.

I guess I have two possible differences with your testimony. One is it seems to me that the unavoidable conflicts that you mention early in your testimony, are unavoidable.

Ms. Page. Yes.

Mr. Gingrich. OK.

That is——

Ms. Page. That was the point.

Mr. Gingrich. And that we don't want to avoid them. And the question I would have for you is two steps on that topic. To the best of your knowledge, is there any system in the world safer than the FAA system, statistically?

Ms. Page. Australia.

Mr. Gingrich. All right.

So we're second?

Ms. Page. Right.

Mr. Gingrich. Well, with all respect——

Ms. Page. They have better weather than we do, so it's not necessarily because of the system.

Mr. Gingrich. OK.

And so it could be attributed to Crocodile Dundee or it could just be that they have—that if you factored in the meteorology, so in factoring in the weather, are we approximately comparable?

Ms. Page. Yes. Yes.

It's important to understand why I stated that the way I did. I didn't mean to say that those conflicts were wrong, or that they shouldn't exist.

Mr. Gingrich. OK.

My concern as a pro high technology, pro change, pro free market conservative, and all those things lumped together, is that if in the 1920's we had established safety as having clear, decisive precedent over development of aviation, it is very plausible that today we would be 15 years less developed than we are, that that would then become an inertial system that automatically stopped or degraded the next risk?

Ms. Page. We could debate that for some time, perhaps, because when a new technology is being considered for implementation, industry does not always rush forward to embrace it.

Mr. Gingrich. No, no, I understand that.

Ms. Page. The airline industry.

Mr. Gingrich. But I'm just suggesting, if you look, for example, at NASA, and you look at the Soviet response to catastrophe and the American response to catastrophe, there is almost an irrational response to the *Challenger* disaster, in that to go for 2 years, fundamentally redesigned the entire system when what you discovered was that launching on a cold day is not wise, rather than saying if it gets below a certain temperature, since we're in Florida, we can probably solve this. That you could easily get a bureaucracy that said, our goal is not getting people there on time, it's not getting people there cheaply, and it's not using the most advanced possible technology, our goal is to optimize safety. And if you optimize safety, people basically wouldn't fly. They'd drive in small tanks very slowly. [Laughter.]

Ms. Page. And they don't fly very well.

Mr. Gingrich. I know that sounds silly, but isn't there a very real danger that by suboptimization of safety, by putting it first too aggressively, you actually would slow down the development of what is statistically an extraordinarily safe system?

Ms. PAGE. There are tradeoffs associated with every decision. There's no one right answer. And you have just raised some of the tradeoffs.

I want to emphasize that this testimony was not designed to be an advocacy testimony.

Mr. GINGRICH. I understand.

Ms. PAGE. It was a weighing testimony.

Mr. GINGRICH. I'm trying to explore, and give you a chance to——

Ms. PAGE. I understand.

Mr. GINGRICH. Let me assure you this is a lot more interesting and a lot more useful than some of the debates I've been in in the last week.

On page 7 of your testimony, you state that the FAA badly needs effective airport and air space system measurement tools for evaluating system capacity. What do you mean by that?

Ms. PAGE. Well, the way FAA encourages depeaking by the airlines, is to call all the airlines into a room and say, we think we have too many flights at 9 o'clock a.m. in Chicago, folks, which one of you is going to move your flights? One airline we know moved its flight 15 minutes later, it didn't show up until the fifth screen on the computerized reservation system, it lost so much money in two weeks that it put its flight back at 9 a.m.

The FAA does not have good systemwide modeling capabilities, so they can't really tell what changes in one part of the system will do to another. The east coast plan is a good example. We know that delays at New York and Washington have been ameliorated considerably by the implementation of the east coast plan. Guess what happened, however? Air space has become so congested around Philadelphia that now we're seeing delays at Philadelphia, and some commuter lines, especially under IFR conditions cannot make their regular flights, and they're having to cut back their flights and are seriously afraid that this will have a very bad effect on their existence, not just their business.

So that's——

Mr. GINGRICH. OK.

So you want a more sophisticated national modeling capability at FAA?

Ms. PAGE. Yes.

Mr. GINGRICH. Would you then attach to that some kind of centralized ability to dictate as opposed to jawbone?

Ms. PAGE. I think Congress needs to bite the bullet on that one, sir. I think we're—yes.

The short answer is yes.

Mr. GINGRICH. I've been reading Perestroika, and I'm favor of decentralization.

Ms. PAGE. I see.

Mr. GINGRICH. I'm not sure that I want a GOS plan of aviation.

Ms. PAGE. The important word that you used was system. In this country every airport, the operations at every airport affect all other operations. When there's a delay due to bad weather at one, as you well know, it has an impact on all the others. Therefore, if there is an understanding in some central place of what these impacts are, there can be more sensible decisions made about how to manage that air flow.

Mr. GINGRICH. But it is important to distinguish between the acquisition of systemic information and the centralization of decisions.

Ms. PAGE. Yes.

We have begun talking about two separate parts of the system, and it's probably my error.

Let me go back to what I think you were really getting at, which is how are the decisions made on the landing slots, or the capacity of a given airport, the four airports where there are landing slots, let's take them as an example.

The choice of how to decide who gets those slots, since I do not believe, and nothing in our recent history leads anyone with a good sense and understanding of it to believe, that we are going to have large new airports in major congested areas soon, we're going to have to do better with what we have. And it may be that, as a public, we think that this jawboning and this sort of encouraging is the right way to make those decisions about how you depeak, or unbunch those flights. It's a pretty unsophisticated way. I'm not sure about the equity of it. I just think this is something that we need to think about and to debate publicly, and I have talked about it consistently in a number of different testimonies, and ultimately I feel that Congress ought to be interested in this because it has access and equity issues associated with it that affect all of us, the entire public.

Mr. GINGRICH. And you would favor?

Ms. PAGE. I would favor the kinds of things I talked about. I'm not saying how we ought—what the ultimate decision ought to be.

Mr. GINGRICH. I mean you'd favor debate, but if we had that—let's pretend for a second. If we were having that debate and this testimony was about that, you would say what is the most effective way of ensuring optimum choice for the system?

Ms. PAGE. One of your colleagues at a previous hearing said to me, sternly when I ventured an opinion on such a subject, Ms. Page, you provide us the information, we make decisions.

Mr. GINGRICH. Well, I was going to allow you to even provide an opinion. I was still going to end up having to make the decision, although there are 435 of us who slug that out.

One last thing. You talk in here about the importance of a strong Administrator. Does that require the capacity for an Administrator to bring in a larger appointed team?

Ms. PAGE. Who does the appointing, sir?

Mr. GINGRICH. Well, that's the question I guess I'm asking in the tradition of the 19th century argument over civil service versus patronage, that don't we now have a system where the number of appointees is so thin, that we're almost like the British Career Civil Service model, in that no appointee ever really gains control of their system unless they're just extraordinarily good. That reasonably competent people are surrounded and absorbed by the system almost within weeks. And doesn't that suggest that we probably ought to double or triple the number of appointees, so that a person arriving can form their own team? They may want to appoint from within, they might want to bring up from within, but they can literally form their personal team to manage a system.

Ms. PAGE. That kind of leadership is important. To be perfectly honest, where I stumble on this issue, is that it really takes a very extraordinary, and very bright, and very capable manager to do the kind of job we've described.

As one person in FAA when we were going through this executive branch review, said to me, well, you know if Jesus Christ showed up he might be able to do the kind of job you're describing. And I said well, maybe that's right.

Mr. GINGRICH. But isn't that precisely why you need a strong team, because you're very unlikely to get a brilliant individual leader on a consistent basis?

Ms. PAGE. Yes. Again, a lot of it does depend on the qualities that person has. If he has certain—well, each one of us has strengths and weaknesses as a human being. If he is a wise enough individual to understand what kinds of people he needs to compliment his particular set of abilities, then a large team could have a very salutary effect—a larger team than he currently has.

Mr. GINGRICH. How many appointees does the FAA Administrator have that he directly controls?

Ms. PAGE. Relatively few. And it seems to be getting fewer. He can bring in his press officer, usually.

Mr. GINGRICH. So when he or she is out of the office the Administrator is leaving behind them a civil service that in fact owns the system.

Ms. PAGE. Yes.

There's one other. In recent history the executive assistant, I believe, is a personal appointee.

Mr. GINGRICH. So that's two people, two and a half people out of——

Ms. PAGE. And the press officer isn't always left to the Administrator. It is sometimes imposed from without. And I'm not speaking of recent history for the FAA necessarily. I've seen it happen in other agencies as well. A great deal depends on how the parent arm of the bureaucracy, whatever it may be, whether it's OPM or whatever, sees its mission as establishing what they consider an adequate presence within a given agency. There are very few people that a given individual, even at the Administrator level, can appoint that are his alone, very few—or her alone, I should say.

Mr. GINGRICH. This has been very, very helpful testimony, and I look forward to working with you.

Ms. PAGE. Thank you.

Mr. MINETA. Mr. Bosco.

Mr. BOSCO. Thank you, Mr. Chairman, and thank you, Ms. Page, for your testimony and study. It's a great irony that everyone agrees with the serious of the problem, whether it's the average traveler, or the Wall Street Journal, which seems to run an article practically every week on this, or the Administration, or anyone else, and yet the recommendations always seem to be fairly modest and hedged in any number of different ways.

In some ways I wish, that perhaps you would be more of an advocate, because I think we do need advocates to tell us which way to turn in this situation. But since you did make four specific recommendations, I'd like to ask you about a couple of them.

One is, that to give the FAA Administrator direct control of the far-flung organization, and permit him or her to hold subordinates accountable for system safety. Does the Administrator not now have authority to hold subordinates accountable for system safety?

Ms. PAGE. There were two separate points being addressed in that sentence. And they are expanded on in the summary of the report. And you have a prepublication copy that the staff has, that can be made available to you.

Let me quickly address each one of them. We felt that one of the big difficulties in FAA is that there is an inadequate communication across the agency, between flight standards, air traffic control, the development and logistics section, to ensure that there is a systems approach taken. Actions taken by one do not necessarily fit well with another. That's what we were talking about with system safety.

Now the accountability issue for the Administrator is quite another one. We were getting at the issue of the regional administrators and the autonomy that the regions have in that particular, and the slowness of FAA in developing uniform standard requirements for their inspections and for their inspectors primarily. They have not had a single inspection form, so inspectors going out have historically been pretty much able to use a sheet of paper on which they record the things that they observe. They are moving toward standardizing those.

Mr. BOSCO. But you're saying that at present the FAA Administrator does not have the power to hold subordinates accountable for system safety?

Ms. PAGE. Under the current organization, the flight standards division in the Texas region, for example, reports to the Texas Regional Office Director. He does not report to headquarters. The proposed change in the Secretary's task force report, changes that so that the flight standards director in Texas will report to headquarters, but that's basically all it changes. It doesn't change some of the other decisions that the regions make, in some cases the regions have made decisions that have been countermanded by the Administrator, and court battles have ensued. Ultimately the Administrator has prevailed, but it's been a very unseemly affair during the working out process.

Yes, the answer is fundamentally he can, if he makes the effort. There are many, many things built into the system that do not give him a great deal of accountability. There are 22 separate offices that report to the Administrator. That's too many for one person. They should be centralized, including each of the regional offices.

Mr. BOSCO. But you're saying—I thought you were saying that some safety inspector in Texas ought to be able to report directly to the Administrator, and now you're saying that too many people are reporting.

Ms. PAGE. Oh, no. Sorry. Then I was not clear.

The chains of command should funnel more narrowly. When you have an Administrator with 22 offices reporting to him, then he can't possibly spread himself so thin. We were saying that there ought to be streamlining so that there is a narrower funnel to bring those 22 somehow into at most three or four associate administrators, who would then report to the Administrator. So that there would be a direct chain of command.

Mr. Bosco. So you would envision just sort of a shifting around of the hierarchical ladder and that would instill some kind of sense of purpose in every one, and get this thing straightened out?

Ms. Page. I don't know that it would do that. There is a wonderful saying——

Mr. Bosco. Well, I'm sort of curious as to what is going to solve this problem. I really don't see it in all these recommendations.

Ms. Page. No, I understand. I don't know the magic answer. We identified problems that we saw that we thought could be addressed without tremendous upheaval and——

Mr. Bosco. Well, maybe we need a tremendous upheaval.

Ms. Page. Maybe we do. That would be—if you wanted us to look at that, we would be happy to undertake it.

Mr. Bosco. Well, were you told to not to look at a tremendous upheaval, or were you—I mean what version were you told to study, the modest upheaval, the tremendous one, the no upheaval?

Ms. Page. The request letter asked us to look at aviation safety in a competitive environment to see what had happened since deregulation that might necessitate changes in the FAA. And that was a very large task. It took us quite a long time, and we had to work very closely with all parts of the industry to find out just what had been going on, because nobody had kept very good track of that on an aggregate basis.

Then our focus turned to what changes to the regulations are required, or what areas of the regulations need changing to address what has changed in industry. As we progressed through the study, and certainly as this Spring came to a close, we began to feel that there were management issues of the kind we've been talking about today, that really we couldn't ignore.

A little bit of history that might be helpful, the Aviation Safety Commission was established just after OTA's report had been requested by the Full House Public Works Committee. And we did not want to duplicate work of another Congressionally mandated group, so we got together with them, and we sort of split the turf. They would do the management and we would do the more technical and safety oriented things. As it worked out, and we kept the communications going, some of their recommendations, particularly the division into safety technologies seemed to have problems associated with them. We began to develop what, as you correctly point out, is the sort of low profile approach to management charges.

And it would be unwise of me to try to guess what more radical solutions would be because I'd need to think about that a lot, and we'd need to use the background we have developed. I think it's a very important issue. It's fundamental to many of our large Federal bureaucracies, as is the issue Mr. Gingrich was talking about.

Mr. Bosco. Thank you very much.

Mr. Mineta. Ms. Page, on page 6 of your prepared statement, you refer to National Resource Specialists that the FAA can hire and that they should be expanded. What are National Resource Specialists?

Ms. PAGE. There are 20 of them, or 22, that legislation was passed to permit FAA to hire. They can be hired at outside the GS levels. The purpose in creating them, and I believe it was under some special legislation, perhaps from the authorizing, Science and Technology Committee, was to provide the capability to have that expertise in highly technical areas. The FAA currently has nine of those 22 positions filled. They are in such fields as—and these are the existing ones, advanced materials and composites, weather systems—well, I'm bogging down, but I can get that to you for the record. I have a list of them and who they are.

Nine is not very many for the degree of technical expertise required for an agency like FAA.

[The following was received from Ms. Page:]

AVIATION STANDRADS
NATIONAL RESOURCE SPECIALISTS

Name	Specialty
Walter Korsgaard	Explosives
Thomas Imrich	Operational Evaluation/ Test Piloting (Air Carrier Operations)
Richard Adams	Aircraft Icing
Terence Barnes	Flight Loads/Aeroelasticity (Fixed Wing)
Michael DeWalt	Aircraft Computer Software (Engineering)
George Lyddane	Flight Management
Joseph Soderquist	Advanced Materials/ Nonmetallic
Stephen Soltis	Crash Dynamics
Thomas Swift	Fracture Mechanics/ Metallurgy
James Treacy	Advanced Avionics/ Electrical

Mr. MINETA. And what about this other reference to better use of NASA and NTSB existing programs?

Ms. PAGE. There I was referring to some of the safety data at NTSB. It is organized differently than that at FAA, and they don't overlap. NTSB and FAA are working to utilize the same accident reporting requirements, so at least they can compare their data. Before this you weren't able to compare the two data bases. NTSB is better at handling and analyzing data than FAA.

On NASA, I was referring specifically to the human factors expertise that exists at NASA Ames. There is some very good research going on there. And particularly in the aviation standards section of FAA, there is so little interest in human factors that we felt that it was a major shortcoming of their programs. There is a great deal known about pilot fatigue levels, especially on long flights over the Pacific, or transoceanic flights. There's a great deal known about the kinds of cognitive errors people make when they're confronted with different kinds of new technologies that would be particularly by pertinent when things like the advanced automation system, or datalink are eventually deployed. What should we begin to look for, how should we begin to train people to deal with these new technologies.

A lot of that expertise exists at NASA and also at DOD. And FAA is not particularly receptive to ideas from outside the agency.

Mr. MINETA. OK. Well, thank you very much, Ms. Page. I appreciate your being here. I also want to thank you for the work that you're doing on that Safe Skies for Tomorrow report. We've had a chance to see a draft and look forward to the final report coming out. So I'd like to again thank you for your work, not only in helping this subcommittee, but also on our Surface Transportation Subcommittee with respect to study involving the Motorcarrier Safety Act. You've been very helpful on that. So I just wanted to thank you very, very much. And I know that we will have an opportunity to call on you again in the future, so again thank you very much.

Ms. PAGE. Thank you, sir.

[Ms. Page's prepared testimony follows:]

STATEMENT OF EDITH B. PAGE
Project Director
Office of Technology Assessment

Testimony Before the
Subcommittee on Aviation
Committee on Public Works and Transportation
United States House of Representatives

SAFE SKIES FOR TOMORROW:
AVIATION SAFETY IN A COMPETITIVE ENVIRONMENT

June 2, 1988

SAFE SKIES FOR TOMORROW

Good morning, it is a pleasure to appear before the Subcommittee this morning. OTA recently completed work on a report requested by this Subcommittee entitled Safe Skies for Tomorrow: Aviation Safety in A Competitive Environment. The report is now in press, and we anticipate it will be ready for release shortly.

For this study, OTA took a comprehensive look at the entire commercial air safety system, including a review of FAA technical and safety operations and programs and an analysis of Federal safety data. Another part of OTA's work was assessing the changes that industry has undergone since deregulation. Our research showed that although today's airlines pursue individual management philosophies, they have one common characteristic; each has changed its operating practices to control costs, eliminating some layers of the old safety system and replacing them with alternatives that must still be evaluated.[1] **As FAA itself has recognized, during times of major industry upheaval, such as the years since airline deregulation in 1978, vigorous Federal safety management programs and technical and operational oversight and adequate equipment are vital to ensuring a high level of public safety. OTA found that FAA, hard hit by budget cuts and personnel reductions, has fallen behind in numbers of staff and levels of technical expertise as well as equipment modernization.** Rather than taking an advocacy position for any particular pending legislation, my testimony today will focus on ways to overcome some of these difficulties and help FAA function more effectively.

FAA has a dual mandate: "to promote safety of flight . . . in air commerce through standard setting" and to carry out for the Secretary of Transportation his or her responsibility "to encourage and foster the development of air commerce."[2] While these tasks are not necessarily incompatible, an inherent tension exists between them in two vital safety activities of FAA — inspections and managing and operating air traffic control. In times of massive and rapid change, such as that of the past decade, the dual mandate can present the agency with unavoidable conflicts. The pressures of airline schedules bunched at peak hours on the air traffic system provide one obvious example.

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[1] Information for the report on changes in the industry was drawn from OTA's primary research, including workshops, site visits, and conversations and correspondence with representatives of industry and the research community. A partial list of these contacts may be found in Appendix A.

[2] Public Law 85-726.

In addition, OTA analysis indicates that many FAA safety functions need strengthening. Among the most important are raising inspection and air traffic personnel levels; near-term improvements to Air Traffic Control (ATC) to cope with increased traffic, and developing analytic tools for managing airport and airspace demand; upgrading training programs for inspectors, controllers, and technicians; programs and systems for tracking and analyzing safety data; and long-range system planning. In addition, life-cycle planning for equipment and personnel with enough flexibility to respond to changing demands and vigorous programs in hazard and human factors analysis for new technologies are needed. Additional, stable funding resources will be needed to support these functions as well as FAA policy and resource management, technical competence, and system safety oversight.

Many of FAA's problems have their roots in the bureaucratic culture and are characteristic of most Federal agencies. The lack of agency autonomy over personnel, procurement processes, and budget decisions and its inability to adapt quickly to change are not problems unique to FAA; they will exist regardless of the organizational structure within the government. Undeniably, however, over the past decade, FAA's effectiveness has been undercut by policy decisions carried out by DOT and national budget constraints entirely external to FAA activities. These have slowed FAA regulatory processes and procurement, eliminated many expert technical personnel who chose to seek more rewarding jobs in industry, and prevented modernization of equipment. Agency training programs, technical and cockpit human factors R&D, and long range comprehensive planning have been particularly inadequate.

Only an agency with strong leadership and singleness of purpose and responsibility could maintain a steady course under such difficult demands, and at FAA, such pressures only magnify internal management and structural shortcomings. The agency's organization is extraordinarily decentralized, making turf battles inevitable among the 22 top managers reporting to the administrator. Rapid turnover in administrators, common in Executive Branch agencies, has made such internal disagreements especially destructive.

For example, although policy nominally originates from FAA headquarters, FAA standards for certification are not uniformly interpreted across regions. While the autonomy of the regions does permit allocation of personnel according to regional need, the policy guidance to FAA regions from headquarters is inadequate to ensure agency-wide consistency. Lack of strong top management, inadequate comprehensive planning, and diminished technical expertise have led on occasion to FAA budget and regulatory priorities being set through pressure by potent and vocal special interest groups. Appropriate consideration of system safety is not always part of this process.

If Congress wishes safety to be preeminent in FAA's mandate, it may wish to make that explicit and ensure that funding resources are in place to bolster FAA technical competence and system safety oversight. Priorities for programs include: enough inspection, air traffic, and electronics personnel to match changes in industry operating patterns; training programs for new members of these forces; near-term improvements to air traffic control, including upgraded computer capability to cope with increased demand, and analytic models and computer programs for managing airport and airspace demand where necessary. In addition, better management of safety data is needed to support long-range system planning. A rough analysis of these priorities and associated costs appears in figure 1.

Because the safety functions of FAA are inextricably interrelated, problems cannot be resolved by reorganizing or adding resources for any single component. OTA

Figure 1

Commercial Aviation Safety Policy Options

Policy option	Maintain current safety with increased demand	Increase safety	Approximate costs Fixed	Recurring
			($ millions)	
FAA Management Improvements				
1. Make safety FAA's preeminent responsibility	X	X	*	*
2. Lengthen and stabilize term of Administrator	X	X	*	*
3. Streamline FAA organization	X	X	1	1
4. Increase inspector staffing	X	X	*	60
5. Address personnel issues of relocation, technical expertise, and compensation	X		5	40
6. Improve training programs for field and facility personnel	X		80	20
7. Improve data collection and analysis	X		1	5
System Operating Improvements				
1. Near-term ATC improvements	X		200	.2
2. Controller and technician staffing	X		*	300
3. Manage airport and airspace demand; develop system capacity models	X		20	2
4. Undertake human factors research and incorporate into procedures and regulations	X	X	20	5
5. Enhance hazardous weather safety and communication	X	X	80	*
Note: FAA 1988 Appropriation =$6.1 billion		Total:	350-450	400-500

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*Less than 1.

Source: Office of Technology Assessment

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* less than 1

concluded that separating agency activities into regulatory and operating (air traffic control) functions would diminish the effectiveness of the entire system. Furthermore, OTA determined that without more emphasis on system safety management at the very top, FAA agency-wide problems that have hampered the organization's capabilities are likely to continue. Internal management improvements are necessary to support long range planning; technical capabilities; internal coordination, especially between R&D activities and ongoing operations; even-handed application of regulations in inspections, enforcement, and certification across regions; and management information systems. Shortcomings in these activities are embedded in the FAA structure and operations and affect air traffic operations, technology development and safety standard programs alike. Moreover, FAA organizational problems have exacerbated the impacts on the agency of government-wide problems of inefficient and cumbersome Federal personnel and procurement requirements and national budget constraints and priorities.

While Congress has demonstrated its reluctance to alter current policies pertaining to the use of the Aviation Trust Fund, short-term improvements to ATC to address capacity problems and enhanced FAA technical expertise are immediate needs that could be addressed by resources from the Fund. Demonstration by FAA of a plan to use funds specifically for such purposes could help to convince Congress to authorize them. However, other ongoing FAA activities fall under the Federal responsibility for safety in interstate commerce and are appropriately supported by the General Fund.

HOW TO CHANGE FAA

OTA found general agreement about the organizational and operational shortcomings of FAA. However, proposals for reform range widely. Generally, debate over reshaping the agency centers around the following concepts: (1) length of the Administrator's term; (2) the policymaking relationship between DOT and FAA; (3) status of ATC functions, including proposals to contract ATC service to a private provider, establish a Federal corporation, or form a nonprofit, user-owned corporation; and (4) status of the Aviation Trust Fund with the debate centered around the unified Federal budget process. OTA concludes that the frustrations underlying these proposals have two principal sources: overall Administration policy and internal FAA management problems. Removing FAA from DOT, as S. 1600, H.R. 4346, and the Aviation Safety Commission report suggest, may not address the principal frustrations or their sources. An FAA independent of DOT would still be subject to Administration policies and national budget priorities, just as NASA is, for example, while internal problems must be resolved by and within FAA itself.

The frequent turnover of Federal administrators works against independent decisionmaking and planning and implementing long range programs in every agency, and FAA is no exception. OTA concluded that FAA operations and regulatory and oversight processes could improve markedly with the establishment of strong, independent, and consistent leadership by the FAA administrator. Congress may wish to consider three changes to reach this goal. The first includes explicit establishment of the safety function as preeminent for the FAA Administrator and allocating stable, adequate funding resources. The second is streamlining the structure of FAA to give the administrator direct control of the far-flung organization and permit him or her to hold subordinates accountable for system safety. Finally the administrator's length of tenure could be increased to a fixed term of up to 5 years. To ensure accountability, the administrator could be required to develop a rolling 5-year agency development plan and report annually to Congress on its status.

Most of these goals could be accomplished through changes to policies and some amendments to existing legislation. For example, to ensure that the responsibility for air safety remains with the FAA Administrator rather than being assumed by the Secretary of Transportation, Title 49 USC, section 1655, (3)(c)(1) could be amended to transfer and vest in the Administrator the functions, powers and duties, rather than having him or her exercise those on behalf of the Secretary. Streamlining the structure of FAA is a management responsibility of a strong Administrator. The record indicating the need for such streamlining is by this time sufficiently compelling that internal FAA turf battles notwithstanding, this must and can be done. Changes to training programs, planning activities, data capabilites and management can all be made from within FAA by a seasoned Administrator who is also a skilled manager accustomed to controlling a large, bureaucratic, technical organization. We are well aware that individuals fitting this description are hard to find.

A willingness on the Administrator's part to experiment with different methods of personnel and procurement management could modify the most severe effects of civil service and procurement requirements. For example, the maximum age for hiring air traffic controllers could be raised from 40 to 45, permitting tapping the pool of retiring military controllers. Additional flexibility for cost of living differentials could be given for controllers, inspectors, managers, and technicians to meet some of the pay disincentives that currently discourage personnel relocations. The Navy is currently experimenting with grouping GS levels for technical personnel at two facilities to provide for more flexible and rapid promotions based on performance. The number of National Resource Specialists FAA can hire could be expanded and all authorized positions filled. FAA could further enhance its technical expertise and data resources by better use of existing programs at the National Aeronautics and Space Administration (NASA) and the National Transportation Safety Board. Recent successful deployment of the Host computer system at Air Route Traffic Control Centers only 6 months behind the original schedule is a clear signal that procurement delays need not be inevitable.

FAA AND PUBLIC POLICYMAKING

Airport and air traffic control issues create tension for FAA between ensuring maximum traffic flow and meeting safety standards and State or local environmental and land use concerns. In its 1988 reauthorization of the Airport Trust Fund, Congress reaffirmed the importance of environmental concerns by increasing funding to airport authorities for land purchases for noise control purposes. Such concerns are serious obstacles to near-term airport construction or expansion; thus, we may have to live with existing airports.

Hub and spoke operations require tight airline schedules, with numerous connecting flights arriving and departing within a relatively short period of time. This practice leads to periods of intense demand and even overload for the busiest airports and airspace. Air traffic control system renewal moves at glacial speed, slowed by inadequate system planning, technology development difficulties, and administration and congressional budget decisions. Current DOT methods of encouraging airlines to spread out flights scheduled at peak hours at busy airports consist basically of jawboning and persuasion — if these are ineffective, massive delays and public uproar ensue. FAA badly needs effective airport and airspace system measurement tools for evaluating system capacity. Air and ground space management may require imposing surcharges or altering airline schedules and airport landing slots at the most congested facilities during peak hours. Such decisions pose serious policy questions for Congress and DOT to consider, related to economic equity and access to public facilities. These require careful scrutiny, public debate, and cooperative, deliberate decision making backed by sound technical analysis. FAA can provide the latter, but it is not an agency well suited to making public policy decisions on contentious and divisive issues.

Improving traffic management is only one example of the ways close interaction and mutual cooperation between DOT and FAA is indispensable to the national policymaking process. Moreover, although many in the aviation community find DOT intrusive and overly political, DOT represents FAA's interests in the cabinet — especially important during budget formulation — and often provides a policy viewpoint on other difficult issues to balance FAA's technical perspective.

As Congress considers ways to address dilemmas associated with FAA, let us remember that separating FAA from DOT involves major surgery. The recuperation period may demonstrate that the surgery changed the institutional framework, but did not cure the fundamental problems. The NAS Plan, the most forward looking FAA modernization plan and program in years, was conceived and established under a DOT Secretary and an FAA Administrator working as part of the same institutional framework and as part of the same administration that are now being identified as the reason surgery is needed. It is important to consider carefully how to address the causes of the illness, rather than the symptoms. Finally, I want to acknowledge that the issues under discussion today are easy to complain about, but among the most difficult to resolve. OTA is pleased to have played a role in delineating and clarifying these issues, and stands ready to assist further as appropriate to continue the Federal commitment to air safety.

APPENDIX A

MAINTAINING SAFETY IN THE AVIATION AND MOTOR CARRIER INDUSTRIES IN A COMPETITIVE ENVIRONMENT

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Office of Technology Assessment
U.S. Congress

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Maintaining Safety in the Aviation and Motor Carrier Industries
in a Competitive Environment

WORKSHOP ON HUMAN FACTORS IN COMMERCIAL AVIATION SAFETY

Science, Education, and Transportation Program
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Maintaining Safety in the Aviation and Motor Carrier Industries in a Competitive Environment

WORKSHOP ON TECHNOLOGY IN COMMERCIAL AVIATION SAFETY

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AVIATION SAFETY REVIEW MEETING

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AVIATION SAFETY REVIEW MEETING

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Mr. MINETA. At this time I'd like to have Mr. Kenneth Mead, Associate Director of Resources, Community, and Economic Development Division of the General Accounting Office, to come forward with his colleagues.

Please go ahead and introduce your colleagues and your testimony will be entered into the record. Please proceed in your own fashion, Mr. Mead.

TESTIMONY OF KENNETH M. MEAD, ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY MARY CHESTON AND ALLEN LI

Mr. MEAD. Thank you, Mr. Chairman. I'd like to introduce my colleagues. On my right is Mary Cheston. Mary directs our work on the FAA work forces. On my left is Allen Li. Allen directs our work on the National Airspace System Plan. I'll summarize what is a fairly lengthy statement.

We appreciate the opportunity to appear today to discuss questions of FAA effectiveness in meeting aviation needs for the nineties and beyond. At the outset, I would like to state our view that safety oversight and regulation are inherently Governmental responsibilities. And we concur with the President's Aviation Safety Commission and others, that these functions ought not to be removed from the Federal Government or from public accountability. We also note that the various proposals for an independent FAA would retain safety oversight as a governmental responsibility.

Our reviews have not dealt directly with the question of an independent FAA, but we focused on many areas that have been identified as needing improvement in FAA operations, such as personnel and procurement. Our testimony today will make three basic points.

First, actions such as making FAA independent of the Department of Transportation and exempting FAA from Government procurement and personnel rules will not, in themselves, be sufficient to address the concerns that have been raised. In fact, steps need to be taken to improve FAA's procurement and personnel processes, regardless of whether they are exempted from the Federal rules.

Second, while involvement of the Office of the Secretary in FAA affairs has been characterized as meddling and micromanagement, there is a less well publicized side to this issue where departmental oversight has proven beneficial. Long-term considerations also are relevant to the FAA independence debate, such as how cross-modal transportation policy and planning will be conducted if aviation is excluded from the responsibility of the Department.

Third—and we see this as probably the most critical issue—ensuring that increasing aviation funding needs are met really seems to us as the paramount issue facing the Congress on how to enhance the capacity of the Federal Aviation Administration to meet its mission.

Prior to discussing these points, I think it will be helpful to look at the content of some of the proposals. Along with independence from DOT, the proposals, to varying degrees, would exempt FAA from procurement, personnel, and various budgetary rules. The problems identified are acquisitions taking too long, work force shortages, overreaching involvement by the department, and funding problems. I will discuss each one of these in turn.

NAS PLAN DELAYS

Originally estimated at about $12 billion, ATC modernization could now cost as much as about $24 billion by the year 2000. Our work has shown that significant delays ranging from 2 to 6 years have been experienced in the major programs, such as weather detection systems and the new advanced automation system. As a result, the benefits of the plan have been deferred and pushed further into the future.

Why was FAA so far off on their time table? Our work shows that, at least to date, the bulk of project delays are related to FAA underestimating the complexity of the highly automated systems, the time needed to develop system software, and the interdependencies among the different systems. That is, the systems must work together. Overly optimistic schedules in the original 1981 NAS Plan raised the expectations of the aviation community, the Congress, and probably everyone else. FAA did not know enough about what was required until later, when it hired a systems engineering and integration contractor, Martin Marietta, in 1984, to assist in technically managing the plan, and to perform more analysis. The contractor identified many modifications that would be required to correct shortfalls in the original NAS Plan design.

Further, the technology required for many of the NAS Plan systems, especially software, was proving much more complex to develop than had been anticipated, either by FAA or any other contractors. Not having a solid design at the outset resulted in underestimates of the time needed to develop and install systems, the funds needed to correct design deficiencies, and the personnel needed to install the equipment once it was developed.

Exemptions from Federal procurement rules will not, in our view, solve problems like these. In fact, regardless of whether FAA is exempt from the procurement rules or remains a part of the Department of Transportation, there are steps the agency can take to make the acquisition process for a complex ATC systems more effective. These include validating the system design early in the acquisition process and testing systems in a live environment before making major commitments to buy equipment in significant quantities.

FAA STAFFING

The 1981 controller's strike and the ensuing difficulty in rebuilding the air traffic control work force, to make up for the loss of nearly 11,000 controllers, have kept the limelight on FAA's problems in this area. Similarly, FAA is rebuilding its inspector work force, after cutting this staffing at the time when the number of airlines and aircraft were growing substantially. Also, FAA prematurely reduced maintenance staffing because it was anticipating NAS plan developments that did not occur.

FAA is now, though, increasing each one of its major work forces: controllers, inspectors, and maintenance technicians. In the past FAA has not aggressively pursued some of the authorities available to address hiring problems. It has recently undertaken some initiatives to streamline controller hiring and possibly to improve controller pay. These efforts, in our opinion, are encouraging.

Specifically, by administering a controller aptitude test and doing background checks, FAA plans to reduce the time it takes to hire qualified controller applicants from the current almost a year to roughly two months. FAA is also examining the way that controllers are currently paid and hopes to propose classification and pay changes that will help to attract and retain employees. We think FAA is on the right track in that area.

But we also believe that FAA needs to improve and use a key management tool, staffing standards, regardless of whether the agency receives an exemption from personnel rules. That is because FAA needs a sound basis for estimating its staffing needs. Currently it cannot say with confidence how many people it needs or will need.

DEPARTMENTAL OVERSIGHT

We recognize that the appropriate level of departmental oversight can be a question of philosophy and that instances have occurred when the Department's involvement in FAA affairs was perceived as micromanagement, and others exist where the Department's involvement was not considered constructive in tone, or supportive of FAA morale. But we are in this for the longer term, and we believe it is important that the debate about whether FAA should be a part of the Department also consider the potential for a beneficial side of Cabinet-level oversight. Simply making an agency independent of a cabinet department is not a guarantee of success.

A benefit that could accrue to an organizational structure that keeps FAA within DOT has a greater likelihood of integrated planning and policymaking among the modes. The extent to which this has been achieved to date is certainly open to debate. But it is not clear to us what would become of this objective if aviation, which is the fastest growing mode of transportation, is removed from the Department of Transportation. We also have observed instances where there has been a constructive and useful side to the Department's involvement in FAA affairs. And these include some very important contributions to safety, ensuring more accurate disclosures to the Congress, and more mundane procurement issues involving how well an acquisition will respond to aviation community needs. I do not intend to paint a picture that's entirely positive. But I do want to point out that there has been another side to this issue.

FUNDING NEEDS

Mr. Chairman, funding needs for the NAS Plan as well as FAA's work forces, will intensify in the next several years, and, in our view, they are likely to intensify greatly. Consequently, FAA will need to request and, in turn, receive a predictable and sufficient flow of funds. Now, due primarily to slower than expected progress in the NAS Plan to date, the trust fund, which is the funding source for capital development of the Nation's air transportation system, has a surplus of about $6 billion. This surplus will be needed to cover the expenditures we previously discussed. Another issue is that the various FAA work forces—controllers, inspectors, maintenance technicians—must currently compete for funding with other Federal programs, because, (1) the fund doesn't take in enough money to cover all work force plus NAS Plan projections, and (2), and perhaps more fundamentally, the trust fund legislation currently contains substantial restrictions on the ability of the fund to cover work force salaries.

If the trust fund is used to finance a greater portion of FAA activities, including work force salaries, and some have suggested this, the surplus will eventually be depleted. That would mean that consideration would have to be given to changing the current tax and fee structure. We believe that expanding the coverage of the trust fund is an idea that deserves consideration. We believe it would provide a stable, all inclusive funding source for FAA operations, financed entirely by those who use the aviation system.

We recognize that widespread concern exists that trust fund spending will be restricted, due to the pressure to reduce the deficit, and that these current concerns are likely to persist even if the fund were made available to finance all FAA operations.

As our prepared statement shows, there were over 150 trust funds existing Government-wide in 1987. So this is not an issue that is confined exclusively to the Aviation Trust Fund. But we at GAO have become increasingly concerned about the extent to which trust fund surpluses, under the unified budget, mask the severity of the deficit on the non-trust fund side of the Government operations.

Let me give you an example. The $150 billion deficit that was reported for 1987 does not reveal that the non-trust fund deficit was actually $223 billion, offset by trust fund surpluses Government-wide of nearly $73 billion, of which between $5 and $6 billion was the Aviation Trust Fund. GAO is preparing a report on this problem and will be including suggestions on structuring the budget differently to facilitate analysis and decisions on relationships between trust and non-trust fund operations.

In conclusion, we believe that making FAA independent of DOT, or exempting the agency from procurement and personnel rules will not, in themselves, be sufficient to address the basic work force and NAS acquisition problems. Considerable time is required to train new staff for FAA's work, and this would apply to an independent FAA just as it does now for the current FAA. Modernization of the ATC system has been delayed more because of the complexity of the technology than because of adherence to the Federal procurement rules.

We cannot say whether an independent FAA would deal with these issues more effectively than the current FAA. However, we do believe the beneficial side of DOT oversight also ought to be considered in the debate. And finally, we see funding as a critical issue. If work force shortages are going to be effectively addressed, and the NAS Plan to proceed as planned, considerably more funding will be needed, both in the immediate future and for the long term.

That concludes my statement.

Mr. MINETA. Thank you very much, Mr. Mead.

I was just commenting on the report that's just been delivered to us from the Secretary's office on Texas Air.

Mr. Mead, with respect to improvement of the procurement process, there's been some indication about the frustration with the slowness of the process. On page 2 you suggest that FAA's procurement process would be improved by close adherence to Federal procurement guidance. And I'm wondering, how does the FAA process deviate from that guidance? If the FAA was to adhere to that guidance, as you recommend, what would be the impact on the length of the procurement process?

Mr. MEAD. The guidance we are referring to is OMB Circular A–109. A–109 lays out some very basic management practices that we think work well in major high tech procurements.

The circular basically calls for a procurement to proceed in this way: An agency first identifies its mission needs, then it considers different design concepts for meeting those needs, like, "do I need a train to get from point A to B, do I need a plane, or do I need a car, or a bus?" The agency then explores, according to this circular, which one of these designs would be best to pursue. It next develops the design concept, followed by full-scale development of the design and a prototype of the equipment that the agency plans to buy. Finally, the system is tested, evaluated, and produced in the planned quantities.

For most of the major systems in the NAS Plan, FAA skipped the early design phases and moved directly to full-scale development and production. And now that the Martin Marietta people are on board, they are identifying a lot of problems with the designs of the original systems. One reason they're identifying these problems now is that they weren't identified back in 1981 and 1982 when the original NAS Plan came along.

As to how much time, what impact this will have on schedules, that's hard to say. We think, as our statement indicates, that the original milestones to the NAS Plan were probably optimistic.

I think it's fair to say, though, that applying A–109 principles would make sure that the procurements were less risky and would prove ultimately more effective.

Allen, do you want to amplify on that?

Mr. LI. The only thing I would add, Mr. Chairman, is that when we are talking about an A–109 type process, we are talking about a disciplined process. Ms. Page of OTA previously addressed how difficult it was to develop a system within the environment of FAA. One of the things that we have found over the years in our review of these systems is that there is a perception in FAA that something needs to be done right away. Consequently, FAA goes ahead and starts building systems before requirements are well established. Well, sometimes that's just not possible. A case in point is the advanced automation system.

That system is very complex and requires a lot of study and a lot of testing. When we are talking about complex systems like that, you need to have a disciplined process by which you test something before making a major commitment. A–109 articulates federal guidance to that effect. It also recommends points at which to make some key milestone decisions where top management asks whether we know enought about the system at that point in time. If that system is thoroughly tested, or if there is sufficient evidence, then let's go ahead. I think that is the value of adhering to the principles of A-109.

Mr. MEAD. And our point, Mr. Chairman, on the procurement rules, we're not advancing the proposition that there are no procurement rules in Government that need fixing. What we are suggesting here is that it is unreasonable to place fault solely on the variety of procurement rules that we've heard so much about.

Mr. MINETA. As I recall, if we were to follow the recommendations of the GAO, I suppose the procurement for the Advanced Automation System would have taken longer. Because as I recall you were recommending, or someone was recommending, that there be a complete test of the system before there would be procurement of it.

Mr. LI. I'd like to address that, Mr. Chairman.

Mr. MINETA. Sure.

Mr. LI. You characterize our position correctly, in that we believe that a complete test of the system, both hardware and software, is needed before a commitment is made to production. However, I disagree about our impact on delaying the AAS.

Last year, after we made our recommendation, and with the support of the Congress, FAA did go back, did take a look at our recommendations and did determine that risk mitigation was appropriate. FAA also began to consider such innovations as using a new software language, ADA. In addition, as FAA determined that some additional risks were involved, the agency went back to the drawing board. With certain changes, FAA now believes that the system is much more robust in terms of its design.

So I would respectfully disagree that we caused a delay. I think that in the long run, Mr. Chairman, the system will be operational earlier than if it was fielded prematurely and problems were then discovered when the system was out in the field.

Mr. MEAD.That's a good point. In fact, when you look at the 1981 NAS Plan estimates, FAA told you that in 7 years you were going to have an advanced automation system. And we can't tell you that you're going to have that same system even years from now.

Mr. MINETA. I think that's one of the points that you, or someone, alluded to about the overly optimistic schedule that had been projected for the NAS Plan.

Mr. MEAD. In fact, my predecessor, you may know him, Herb McClure——

Mr. MINETA. Now he's down——

Mr. MEAD. Yes, he's down the street at FAA. But Herb and I have discussed several times how perhaps we should not characterize these as delays in the NAS Plan per se because we are not certain that they ever could have achieved those milestones in the first instance. But they've gotten so much exposure in the Congress and in the press, that we all look at it and say, well, it's a delay. According to the original schedules, many more of the new NAS plan systems should be in place than is actually the case. Perhaps we should refer to them as schedule slippages, it's a less pejorative term.

Mr. **Mineta**. All right.

There's been a call of the House for a vote, so let's go ahead and recess right now at this point. We'll reconvene in about 15 minutes.

[Recess.]

Mr. **Mineta**. The subcommittee will please come to order.

Mr. Mead, I wonder if you could elaborate with some examples of how the DOT's oversight role for the NAS Plan has been constructive and useful?

My general impression is that DOT's role has been to review, but that DOT rarely modifies or changes FAA's procurement approach or recommendation, thereby lengthening the process without really adding anything. I also note that this year the dollar threshold for FAA to make its own procurement decisions was raised very significantly, thereby presumably reducing DOT oversight of many procurement decisions. I'm wondering if you disagree with this change?

Mr. **Mead**. No, I don't disagree with that change.

I'd like to give you a couple of examples. The microwave landing system is a very recent example where the involvement of DOT had some, in our view, very constructive benefits. FAA had gone out to buy—this is a $1.5 billion system—678 of these units. They bought 178 and MLS units are now being delivered. However, FAA wanted to purchase 500 more without one of them ever having been tested in an operational environment.

The Air Transport Association expressed reservations about the FAA strategy for pursuing MLS as a universal substitute for the current instrument landing system. And very recently, through OST's involvement, the decision was made to say, we are getting 178 of these, let's test them out, or at least test a few of them, and see if they work correctly, see if they meet the needs of the aviation community, before proceeding to purchase 500 additional ones. That, in our view, was constructive.

Allen, I think you have a couple others.

Mr. **Li**. There are two other systems, Mr. Chairman, that I think have contributed to an improvement both in the cost of what the Government eventually bought and in the acquisition strategy. First, there is the DUATS system, that is associated with flight service stations. DOT helped by pushing FAA towards an acquisition strategy to procure a commercial system. FAA got the system sooner at reduced risk because it was available off-the shelf commercially. The AWOS system, which is the weather observation system, was another one where FAA was pushed by the Department to acquire a commercial system. That was also beneficial.

I agree in the statement that you made, Mr. Chairman. I think that sometimes OST does seem to be an extra layer in the approval of a major system. And while this sometimes happens, OST's oversight "cop-on-the-beat" influence makes FAA do things a bit more carefully. FAA people have told me that this has been a benefit of that oversight.

Mr. **Mineta**. Now raising the threshold to $150 million, I believe was the amount, was it not?

Mr. **Li**. A hundred fifty million dollars is the threshold at which a major acquisition has to go to DOT through the TSARC process, and yes, last year——

Mr. **Mineta**. Under that $150 million, the FAA is free to go ahead and make the decision?

Mr. **Li**. FAA then carries out a process similar to the TSARC process. The selection executive, which over $150 million is the DOT Deputy Secretary, now is the FAA Administrator or his delegate.

Mr. **Mineta**. And no review by DOT?

Mr. **Li**. The project is reviewed at the outset, but after that DOT Is not involved. That is correct.

Mr. **Mead**. Not unless DOT wants it. One thing Alan McArtor pointed out is that along with this delegation of procurement authority from the Department, FAA headquarters would have to build in a capacity to do functionally what formally OST was doing. And perhaps over time, if FAA builds in that capacity, FAA could review all its own systems, even the ones over $150 million.

Mr. **Mineta**. Now, you state that aviation funding needs will expand significantly and that these funding needs should be met without sacrificing the needs of other transportation modes. This is an argument this Committee has been making for some time now. Can this be accomplished if the Aviation Trust Fund continues to be part of the budget process, and aviation must compete with other modes to come within the Function 400 budget ceiling for all of the transportation needs?

Mr. **Mead**. GAO has historically not been in favor of removing items from the unified budget. The unified budget is very important, but over the past few years it's apparent that there are significant breakdowns in that budget. Very shortly, the Comptroller General will suggest revisions to the budget presentation that will better distinguish among trust funds, non-trust funds, capital budget, and the regular operating budget. That is because right now, as you know, the budget process has an exclusive focus on one number, and we believe this presents problems in conveying what is actually occurring in these categories when the deficit is calculated.

And we hope, we deeply hope, that the budget can be fixed without resorting to removal of accounts from the budget. But if not, at some point, we have to face reality. The health of the program must be taken into account; with this aviation fund, Congress may conclude that it must consider taking it off budget; otherwise, the needs of aviation safety could suffer. GAO is not going to recommend that you take this particular fund and this is off budget because there are many other trust funds involved with this problem and the issues are not limited to just one Fund. But we're trying to recognize the realities of the situation. The current manner of including the trust funds along with nontrust funds in one ultimate budget mark or total masks the size of the deficit on the non-trust fund side of the budget. The Comptroller General will be addressing this later this month.

I would say that if you're going to consider taking the trust fund off budget, that the arguments for doing so become more persuasive as the trust fund finances more of the FAA operations. For example, the work forces, all three work forces, now compete for funding with every other Federal program. And it's fair game for the Congress to say, well, we can balance off the need for controllers, or maintenance technicians, and so forth against the needs of other programs. And that's because the program presently relies on general revenues.

In our statement, one option we were suggesting was to greatly expand the use of the trust fund. I know that would be very controversial.

Mr. MINETA. Some how it seems to me, maybe within the context of the total budget process, something has to be done as we see the Social Security Trust Fund programs come up with a surplus, let's say, in that year 2000, 2010, whatever it is that we're going to be building that trust fund in order to take care of the senior population in 2010, 2015, our budget deficit right now, I suppose is what, $270 billion rather than the $140 billion we're looking at right now?

Mr. MEAD. About $224 billion.

Mr. MINETA. If it weren't for the trust funds that are offsetting.

Mr. MEAD. You raise an interesting point, that a lot of the talk about the Aviation Trust Fund's surplus, well the surplus some people say is there because FAA wasn't spending enough. The Social Security Trust Fund, on the other hand, the surplus is good. It's good it's there, but the concern is that that money will not be there in the first quarter of the next century when it's needed.

Just this week, or soon, I understand the House is going to be voting on whether to take the Postal Service off budget. And the issue there isn't a surplus or nonsurplus, or break even. It's just whether the Postal Service, as a business-like entity, whether it's right to constrain the operation of that entity and say, well, we expect you to operate like a business, but we may not let you have the money and capital investment necessary to do so.

So I think you raise an interesting point that there's these different scenarios, and I suppose there's a story behind every one of these accounts for—some people may say, well this one should come off budget because of A, B and C. In the Aviation Trust Fund, you have a factor that is embroiled with public safety considerations, which you don't always have in a number of these other accounts.

Mr. MINETA. Now you state that the FAA has authority available to establish special pay rates and hire personnel directly, rather than go through the OPM, but that the FAA has not used this authority aggressively. Could you elaborate on the existing authority and the circumstances under which this authority would be available to the FAA?

Mr. MEAD. Mary.

Ms. CHESTON. Currently OPM does allow for special pay rates, agencies can go forward and say, in a particular case, that they have an occupation that they are not competitive with the private sector in hiring, and they can get a special exemption from the GS schedule for those individuals, as has been done for engineers and some of your technical personnel. What we're saying is, essentially, with the exception of controllers, those types of exceptions could be explored for other members of the FAA work force.

The direct hire authority is something that allows the agency to hire people for vacancies directly and do its own examining of the qualifications of those individuals. It has been used on a selective basis for some maintenance technician vacancies in some localities where OPM was seen as a stumbling block, but it is not something that FAA has gone after aggressively on say, an agency-wide basis, to speed the process along.

Mr. **Mineta**. Ms. Cheston, though, aren't those specialty areas, let's say like a nuclear scientist we'd or someone with high technical skills so that we're able to pay higher than what would normally under the GS scale, because we want someone at Jay Livermore Laboratories, or Sandia, or Los Alamos, or somewhere because of that specialty nature? Can't an ordinary person be trained to become an air traffic control specialist as compared to a person who has a specialty skill in something that we may want for the Sandia Lab for instance?

Ms. **Cheston**. The term, "special", in the term special pay rates, does not refer to specialty, per se. It means exception type of pay rate.

You could, for example, have accountants that the Government felt it was not competitive in hiring because in the New York area starting salary for accountants is significantly higher. In that case, you could petition OPM, if you are the predominant employer of that occupation, and if in fact you can demonstrate that you are at a loss because you cannot hire to get a special pay rate. It does not have to be say a scientific or technical type of background.

The difficulty that FAA faces, in the case you're citing with controllers, is that in fact those individuals are trained from the ground up, and hired without a specific technical background, but it's more a problem that there are no comparable occupations in the private sector that FAA could build a case around and go forward and say, well this agency, it's keeping me from hiring people because AT&T is taking all my good people. The case is significantly different for controllers.

Mr. **Mead**. I understand, Mr. Chairman, that the Department is supposed to get back on a number of pay proposals by the fall. And I think it's probably the right track to identify some specific problem areas, that they can deal with, some administrative, and some that they'll need legislation on. GAO is, in fact, exempt from the personnel systems, the civil service system. And it is an enormous undertaking——

Mr. **Mineta**. But the GAO is an arm of Congress.

Mr. **Mead**. Yes, but this is recent.

Mr. **Mineta**. It's not an executive agency.

Mr. **Mead**. This is true, but only recently the Congress exempted GAO from following the civil service rules. That was one of the reasons advanced at the time.

The only point I was making is we've been in the process of trying to develop a new personnel system for some time. It's a difficult undertaking, and it takes a good bit of time. We have only 4,000 or 5,000 people in GAO, and the FAA has about 50,000. If they were all exempted from the personnel rules, 50,000 people would want to know, well, what's going to fill that void.

Mr. **Mineta**. Now, is that a self-executing kind of a situation where FAA makes its own determination as to what positions will be exempt, or does that have to be granted by OPM?

Ms. **Cheston**. It does have to be reviewed by OPM.

Mr. MEAD. Are you speaking of the current law?

Mr. MINETA. Yes.

Mr. MEAD. Yes, OPM review is needed.

Mr. MINETA. Are you suggesting a change in that current law, or are you saying that under the given, or under our present procedures there is a way for being able to do this without really making it any more difficult?

Mr. MEAD. FAA is going to propose a demonstration project. I think if that demonstration project is successful, FAA will need some legislation to get special rates of pay for controllers in some of these high cost areas. It's just a prediction. And I think they're going about it in the right way.

Ms. CHESTON. I think what you'll find is that FAA is taking a much broader approach to the problem than just looking at it from a cost of living differential. They are looking at a brand new way to classify controllers, to rate them, and to pay them overtime. They would start from scratch and build the system, so-to-speak, from the floor up. That's not to say that a demonstration project would not be worthwhile, but I think that they're on sort of a dual track approach to this question. From this, you might see something that is radically different from the way that the controller classification series is currently structured.

Mr. MINETA. Do you have any thoughts on the tenured Administrator for FAA?

Mr. MEAD. Yes, and candidly, I think the tenure is a problem. You can either increase the tenure, or alternatively, improve the capacity of FAA at the top for continuity.

You know, just recently Al McArtor appointed an executive director where formerly there was no such position. When the Administrator leaves FAA, management continuity becomes a problem.

I was talking to a U.S. Senator after a hearing not long ago, and the Senator said that he will know more about the NAS Plan a year from now than will the new administrator. And, incidentally, it's taken us a long time to understand the ins and outs of the NAS Plan.

Mr. MINETA. Well, without going into the details about it, I thought that part of the selection of the Executive Director was because he couldn't get his own selection as an Deputy Administrator.

Mr. MEAD. I couldn't comment on that.

Mr. MINETA. Now your testimony today hasn't endorsed the idea of removing the FAA from the existing structure, yet the aviation Community, several Members of Congress, a Presidential commission have all supported a major overhaul to resolve a multitude of problems. Is GAO discounting these problems, or is GAO not convinced that the problems can be resolved through organizational changes alone?

Mr. MEAD. More the latter, Mr. Chairman. I think many people have identified a number of very significant problems at FAA. We're not convinced that moving to an independent agency is a necessary guarantee of success, or even a more likely indicator of success.

We're concerned that some of these proposals may obscure the need for some even more deep-seated reforms that are needed. And of course, the funding issue would still exist.

Mr. MINETA. Let me follow up on that then, and ask you about the NAS Plan in terms of the modernization of the air traffic control system. Since this includes equipment, personnel, and facilities, do you believe that the FAA's actions in trying to rebuild the air traffic control work force is adequate, and what would you recommend that the FAA do in this regard?

Mr. MEAD. I'd like to defer on Mary on that, but I would point out first, that they are on the right track. We have seen some clear improvements during the last year. But leading up to this last year and a half, FAA has been very slow to respond to some critical needs. In fact, it was just a year and half ago that they were acknowledging the need for increased controller staffing.

But I would defer to Mary.

Ms. CHESTON. I think our position is that you'll see increases requested in the 1989 budget and clearly we do not believe that they are currently adequately staffed to meet their operational needs for controllers. What we've looked at are some ways that recruitment and training would need to be speeded up, or changed in order to guarantee that highly qualified individuals are brought in for those positions, and to reduce some of the current attrition rates that FAA has experienced.

Mr. MINETA. Have we determined what the goal is that we should work toward in terms of air traffic controllers, numberswise?

Mr. MEAD. No. In terms of goals, I would say first of all, the reason we're so well off now on the controllers—it could be much worse—is because of the oversight provided by the Congress on both sides, that set these goals. That's why we pointed out in our testimony that in the long term what you need are staffing standards that will yield reliable estimates of how many people they need.

Mr. MINETA. But even on that, as I recall, at the time of the PATCO strike in 1981, something like 82 percent were full performance levels, FPLs. Today that number is about 65, 66 percent.

Now numberwise we're pretty close, within maybe 600 or 700 of where we were in 1981. We have what, 16,000 controllers today?

Mr. MEAD. But you're still—

Mr. MINETA. And maybe we're at 16,700 in 1981.

Mr. MEAD. But you're at 9,000 FPLs, which is a lot less than you had before.

Mr. MINETA. A lot less. That's the difference between the 82 percent, and the 65, let's say 64 percent level. But, with the Advanced Automation System, with the new Host computer, with all this coming on, we were hoping to get productivity increases to the extent that we weren't going to have to rebuild back to the old 16,700 number.

Of course, we've seen in the meantime, something that wasn't anticipated, and that was the hub and spoke operation, and that's increased the number of take-offs and landings, and the load on the air traffic control system, and we're probably going to have to go beyond the 16,700 we had on the 3rd of August of 1981. Do we know what that is given whatever the projections we have on the numbers of—if we look at it from number of passengers? We've gone from 278 million in 1978 to roughly 465 million in 1987, and if we're talking about what, approaching a billion in the year 2000. It's got to have some relationship to the number of operations between now and the year 2000. What should that be, given the productivity increases expected of AAS and everything else we're doing, what are we talking about in terms of numbers of air traffic controllers?

Mr. MEAD. Allen?

Mr. LI. I don't think that the expectation to have that big controller productivity increase right now has been validated to the point where we can make a determination of what that exact number is.

The reason why I am hedging somewhat is because even the Administrator realizes that the expected productivity gains from AAS may not happen. So I would say that right now, we really cannot predict what that number will be in terms of FAA's needs in the future. I think FAA is going to have to give you that number.

Ms. CHESTON. In our work on the staffing standards that was done for Mr. Oberstar's subcommittee, we did look at what the internal FAA projections are versus what the NAS Plan shows. The internal FAA projections, which we believe are understated, are significantly higher than the projections in the NAS Plan. We are probably talking into the 1990's with approximately 20,000 controllers.

Mr. MINETA. I was also just reminded that the productivity gains were going to really be in the maintenance specialists area, rather than the air traffic controllers.

Ms. CHESTON. The example, I guess, would be that they did not take cuts in controllers, but they did anticipate that there would be productivity savings in the controller work force. What we are saying essentially is that those productivity savings, which will not really come about until after the new AAS sector suites are installed, will not be realized for at least another 10 years, and possibly longer. So that we are still in a rebuilding mode to get to the point where current operational needs can be met.

Mr. MINETA. Thank you.

Mr. Gingrich.

Mr. GINGRICH. I want to ask one or two general questions, and then I would like to submit some questions for the record, if I could, if that's all right with the Chairman.

Mr. MINETA. Sure.

Mr. GINGRICH. I guess I have two fairly large questions. One is, you seem a little more approving of the current Federal procurement system than previous witnesses. Would you say it is inaccurate then to say that the length of time taken and paper work required by the Brooks Act on computers and other information technology in essence means that we tend to buy the technology only after it's past the peak of its relative newness?

Mr. MEAD. We do not see the evidence of that. Again, I want to restate what the message of the testimony was on the procurement issue.

We are not saying that the procurement rules do not need fixing in any way. Our testimony is really intended to provide a perspective on the delays that have been experienced in the National Airspace System Plan to date. It is unreasonable to blame those delays on the procurement rules. The real problem was that the technology for these systems, in many cases, had to be developed almost from scratch. And it takes time to do this. The FAA did not know, when it laid out the projections in 1981, that much of this technology was not already in use. In fact, in a number of the major systems, they thought that the equipment could be acquired simply off-the-shelf. That later proved untrue.

Allen here is an engineer. He can probably speak more to the procurement rules issue than I can.

Mr. Li. Mr. Gingrich, a few years ago, I compared the amount of time that it took for Defense to acquire computers under the Brooks Act with the time under the Warner Amendment—Defense's exemption from the Brooks Act for some computer acquisitions.

While I think that a few years ago your observation would have been correct about the tremendous amount of time it took to acquire computers in the Federal Government, based on the comparison I made, this is no longer true today. In the past year, the former GSA Administrator, Terence Golden, implemented a program called "Go For 12", and a lot of good things have happened since then. To briefly give you an idea of what they have done, GSA has identified bottlenecks in the procurement process, one of which has been the serial approval process for internal approvals. There are efforts underway right now, in several Government agencies aimed at implementing such a change.

So I would say that while perhaps the observation is true that it was taking so long that they possibly were receiving older equipment by the time the acquisition process ended, I do not think that is true any longer. I think that the process has been improved significantly.

Mr. Gingrich. If I might, Mr. Li, let me ask you, if you were to take a parallel acquisition between one of the top 20 or 25 corporations, and the Federal Government on high technology materials, how would you compare their relative speed of acquisition?

Mr. Li. I think that, number one, it's very difficult to compare. And let me explain—I'm not hedging—why it's difficult to compare.

When the Government buys a major system, regardless of whether it is for air traffic control or defense, the system usually has to be developed from scratch to meet the Government's unique needs. When they buy a system in private industry it is usually something that's off-the-shelf and available to everyone because most companies needs are not unique regarding private industry's systems development processes, this was a topic in the Department of Defense Packard Commission report. This report reviewed successful commercial ventures, such as the IBM 360, the development of the Minuteman, and the Cruise Missile. The Commission found that one of the reasons why these ventures were successful was the ability to have less of a serial approval process.

I think that the lesson to be learned from private industry is that we could have more parallelism in the Government approval process. We should not have these people shifting approval papers, going from one box to another.

Mr. GINGRICH. OK.

And you see in your experience and your evaluation that that absence of parallelism is a function of the management culture rather than the legal requirements?

Mr. LI. Yes, sir.

Mr. GINGRICH. Good. That's very helpful.

Second, the other point which I think Mr. Mead was making in terms of how they stumbled into some of this, my impression is that there was not a systems architecture planning approach, that they didn't start it and insist that they knew what they were doing before they started doing something, a model which I've tried to convince people to start describing as visions, and strategies and projects and tactics as a hierarchy. So you have to clearly articulate your vision before you start laying out strategies, and then so forth.

Was that essentially just a management mistake? I mean why would they tackle a project the scale of the NAS Plan without an initial systems architecture?

Mr. MEAD. If you ever want a convincing case for your proposition, I guess you have it with the FAA, the NAS Plan, and Martin Marietta.

Mr. GINGRICH. But I'm curious, and I'm not trying to put you on the spot, although obviously you are, and you may not feel comfortable—I'm a historian by training, and I'm always interested in the why of things, and they're very often different than the theories.

And what I'm curious about is how we can—what lessons we should learn for the future about—I mean, how would one, looking back, have known that somebody should have said, gee, show us the systems architecture.

Mr. MEAD. We'll answer both of your questions. The hard one and the more gentle one that was your second.

Go ahead, Allen.

Mr. LI. In the work that we've done, to put it very bluntly, we found that FAA did not fully think out their NAS Plan in terms of cost, schedule, and performance. I think that there were many unresolved questions within the NAS Plan, such as interfaces between systems. If you're asking me why do I believe this, it is because the NAS Plan, was not really a systems plan.

Mr. GINGRICH. Yeah, but let me stop you a second. I mean, by definition, if you don't have a systems architecture, you're likely to have a lot of interfaces you're not aware of.

Mr. LI. That's right.

Mr. GINGRICH. That's the definition of why one develops a systems architecture.

Mr. LI. That's right.

Mr. MEAD. It took the White House Science Advisory Board to force the SEIC into the NAS Plan.

Mr. GINGRICH. To force the what?

Mr. MEAD. Pardon me, the Systems Engineering and Integration Contractor, which was your design contractor.

Mr. GINGRICH. Okay.

So up until then, they were just sort of stumbling down the road with a series of parallel projects that would hopefully fit?

Mr. MEAD. The original NAS Plan hit the streets late in 1981. In 1984, FAA hired Martin Marietta as a systems engineering and integration contractor. It took a year or two before things took hold. They are now clearly taking hold, and that is why this year a fair number of design shortfalls in the original plan were identified.

Mr. GINGRICH. When do you think, and have we on our side, we've had, what, 2 days of hearings on this last year, didn't we?

Have we applied enough incentive at this stage to ensure that at some point, maybe early in the next administration, we could actually look at, if you will, a shift from NAS Podge to a NAS Plan? What you're really saying is that it wasn't a NAS Plan, it was sort of a hodge-podge of things thrown into one box for PR reasons.

Is your expectation from what you see evolving that there will presently actually be a systems architecture plan?

Mr. LI. Yes, sir, I think there will be. But I think it's going to cost more money, and I think it's going to come about a lot harder.

Mr. GINGRICH. It always does.

Mr. LI. Because you're trying to retrofit something that wasn't right in the first place.

Mr. GINGRICH. OK.

Mr. MEAD. Candidly, we met several weeks ago with the staff of the Subcommittee, and we're concerned that your funding needs for the NAS Plan alone are going to be at or exceeding your authorization levels. That's scary in view of what the outlays have been the last several years.

Mr. GINGRICH. No, it's part of the——

Mr. Mineta. Would you repeat that, please?

Mr. MEAD. Yes. We're concerned that the NAS Plan funding needs for the next several years may be at or exceeding the current authorization levels. If things were to go forward as planned, that they may need more money than the current authorization provides for them.

Mr. GINGRICH. So, you're looking for factors of four or five increase in cost?

Mr. MEAD. I don't think it's that much.

Mr. LI. No, I don't think it's that much. But what we said was that because of this lack of systems approach, there is a requirement to make engineering changes. That is why we said that the baseline cost, which FAA now identifies as about $16 billion, would increase to about $24 billion by the year 2000.

Mr. MEAD. And it's not necessarily anybody's fault. It's not FAA's fault. It's just that the things that they planned to complete correctly are going to cost more.

Mr. MINETA. Will the gentleman yield?

Mr. GINGRICH. Yes.

Mr. MINETA. Since it's all coming out of F&E the NAS Plan, and the non-NASP F&E items. How much of this is non-NASP F&E that we're short? Or is it even NASP needs that we are short under the F&E amounts for the next several out years?

Mr. LI. Sir, that is one philosophical difference between FAA and ourselves. We took a look at the differences and types of engineering changes and other equipment—what they identify as other capital needs—that will be required from now to the year 2000. We believe that those particular activities are NAS-related, and that is the reason why I believe this is somewhat of a shell game. But FAA would disagree with me.

I think that FAA wanted to identify that the NAS Plan did not have a significant cost increase. So they have made the decision that they were going to draw a fence around the NAS Plan, and that was going to be it. They did acknowledge that more things had to be done. But they do not want to include them in the NAS Plan. They're saying that is part of F&E. All we're saying is that these changes that pertain to ATC modernization. Regardless of whether you call it NAS Plan, or you call it something else, FAA needs the money.

Mr. MINETA. Or F&E?

Mr. LI. Yes, sir.

Mr. GINGRICH. So, if I can go back and summarize for a second, you're suggesting that, for a variety of management reasons, we failed to have a systems approach early, that as we now review it all, we're discovering some retrofits that are more expensive than they would have been initially, and that we should be aware of the fact that even when we get the overall plan, and are able to say, gee, now it's under control at a management level, that plan may be, if I'm calculating in my head, about 60 percent more in total costs than the current projection—I guess 50 percent more than the current projections?

Mr. LI. Yes.

Mr. MEAD. Yes. But modernization itself is a concept that should go on in perpetuity.

Mr. GINGRICH. Sure.

So we're either going to spend more over the next decade, or we're going to get it done later.

Mr. LI. Yes. I think the Administrator has coined a new phrase. I do not know if you are aware of it. He now calls the NAS Plan a "Journey."

Mr. GINGRICH. Yes. I'm sure he and Steven Speilberg could discuss it. [Laughter.]

Although I do think that Mr. McArtor has done a good job of insisting on an overview at the appropriate level.

Let me go back again and revisit this just for a second. When you look back are there systems reasons we should be aware of that apply to FAA and other elements of the Federal Government that led to the absence of the vision and strategies of running into this thing, or was it in fact a personality and management decision at that moment in time that probably wasn't correctable by a systems corrections?

Mr. MEAD. No; FAA is a very operational kind of place. They put out fires. Fires are occurring all the time, and you get this sense when you look at the total response to deregulation, and you look at the total response to the NAS Plan, you look at how the work force problems have been handled, and the reactive nature of things at FAA, that they just don't seem to be geared up to have a capacity to be strategic. For want of a better phrase, I would characterize the FAA problem as the need for a capacity to be strategic at the top.

Mr. **Gingrich**. And of course, the whole system of budgeting, and the whole process of this city, is a tactical process, when you talk about things on the scale of a NAS Plan.

Mr. **Mead**. Furthermore——

Mr. **Gingrich**. We almost never get up to a projects level because we do no long-term procurement that is guaranteed.

Mr. **Mead**. Incidentally, you were correct before with the earlier witness. This is the largest civil procurement sense Apollo. By the time it's over, it might be the largest civil undertaking in American history.

Mr. **Gingrich**. Well, I understand your point.

Let me just close with this point, which I wish you'd take back to GAO.

Part of the reason we began developing the concept of vision, and strategies, and projects, and tactics, was for operational people primarily in the Defense Department, to get them to realize that if you don't have this hierarchy, that you shouldn't start tactically every morning until you've figured out what your visions, and strategies, and projects are, because you have no idea what your tactical choices mean at a larger level, unless you have thought that through. This is not new material. This was largely George Marshall and Dwight Eisenhower's style of designing World War II.

It would be helpful, and you might take this back to the Controller General, that for us to begin to institutionalize and integrate those questions, because until this city gets in the habit of asking about topics, whether it's dealing with terrorism, or thinking that you can find an occasional moderate Iranian who'll keep his mouth shut, or a whole range of incredibly stupid things that we do on occasion around this place, you can't understand—and this is part of what we got into earlier, talking about the East Coast Plan and what's the affect in Philadelphia of something which improves New York and Washington. Only by training the culture at the leadership elite levels, both in the news media, the academic, and the business and political areas, and Government, into this kind of disciplined thought, can you force a society this complex in a period of rapid change to talk coherently.

Now we are not currently able to do that. And so we spend a lot of our time on this week's tactical headline. And we spend a lot of our Administrator's time—and it's not that you're going to be able to avoid those, which is what people say, but that by placing them in their vision, and strategies, and projects consequence, any particular event becomes illustrative of larger lessons. And because we can't talk rationally at these levels, and we fairly well don't have this kind of a discipline, we face a long stretch of expensive—I mean, if you think the NAS Plan is expensive, you ought to think of the National culture and the way it's stumbling into the 21st century. And we have a lot of the same kind of thing, lots of energy, lots of drive, lots of arguments, but very, very little specific thinking through at fundamental levels at the right order of magnitude.

And since your agency is one of the agencies which trains the Federal bureaucracy by asking it the right questions, you can play a significant role in beginning to get people to think in a disciplined way about what it is we should be saying.

And I appreciate very much you all coming.

Mr. MEAD. You know, I think that's an interesting point. And I know the hour is late, I must relate to you an interesting story I heard about FAA that I think illustrates your point and illustrates also the observation I was making about the strategic capacity of FAA to look forward into the 1990's and beyond.

In many cases, when GAO reports on an agency's programs, the agency gets upset and defensive. FAA, on the other hand, says, "Oh, is that really happening?" The agency doesn't get angry with us. And especially with Administrator McArtor and his team, we find that we discuss it on the phone. We are telling them things that are going on in the agency that seem to come almost as a quasi-surprise.

FAA needs to take steps to build in the ability to look at itself and look at where it's going.

Mr. GINGRICH. Thank you very much. I will be forwarding additional questions for your response for the record.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very, very much, Mr. Mead, Ms. Cheston, Mr. Li, for the report today, as well as all the other times that we've had to call on you for your help. We appreciate it very much, and I think your testimony today has been very helpful.

Mr. LI. You're welcome, sir.

[Mr. Mead's prepared statement and responses to additional questions submitted by Mr. Gingrich follows:]

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Testimony

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Issues Related To An Independent FAA

Statement of
Kenneth M. Mead, Associate Director
Resources, Community, and Economic
Development Division

Before the
Subcommittee on Aviation
House Committee on Public Works
and Transportation

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to appear before the Subcommittee to discuss several issues concerning the effectiveness with which the Federal Aviation Administration (FAA) achieves its mission. Concern over these issues has prompted several proposals for making FAA independent of the Department of Transportation. The specifics of these proposals include exempting FAA, or its successor, from federal procurement and personnel rules or requirements, and they also address the need to assure FAA of a sufficient flow of funds. Proponents believe these changes are needed if FAA is to accommodate air traffic growth in a safe and efficient manner.

Over the past few years, we have reviewed FAA's effectiveness in discharging its responsibilities for ensuring aviation safety and operating, maintaining, and modernizing the air traffic control (ATC) system. While our reviews have not addressed directly the issue of an independent FAA, we have focused on many of the areas identified as needing improvement, including procurement and personnel. An underlying premise of the information we present today is that ensuring the public's safety should be a principal criterion by which proposals for organizational change are judged. In this regard, we believe that safety oversight and regulation are inherently governmental responsibilities, and we concur with the President's Aviation Safety Commission and others that these functions should not be removed from the federal government or from public accountability.

Based on our work, our testimony today makes three primary points:

-- First, deregulation has combined with other factors, such as the 1981 controllers' strike and the need to modernize and automate the ATC system, to present FAA with formidable challenges. Actions such as making FAA independent of the Department of Transportation or exempting the agency from procurement and personnel rules will not in themselves be sufficient to meet these challenges. In fact, we believe that FAA's procurement process would be improved with closer adherence to federal procurement guidance regarding the development of costly state-of-the-art technologies.

-- Second, the Department's oversight role could potentially offer long term benefits in the areas of airport development, cross-modal transportation planning, and national transportation policy. There also has been a constructive and useful side to the Department's oversight role that has contributed to enhanced aviation safety and greater assurance that systems being acquired under the National Airspace System (NAS) Plan will be reliable.

-- Third, while funds appropriated through the Aviation Trust Fund have been sufficient to pay for the NAS Plan to date, the need for funding not only the NAS Plan but also FAA's work forces will intensify greatly over the next several years. To modernize the ATC system, increase air carrier surveillance, and provide adequate work forces, FAA will need a predictable and sufficient flow of funds. Ensuring that this need is met without sacrificing the needs of other transportation modes is, in our view, a critical issue in the current debate over improving the capacity of FAA to carry out its mission.

Before amplifying on these points, a perspective should be provided on FAA's responsibilities. Air travel has expanded rapidly since the industry was deregulated in 1978--from about 276 million passengers in 1978 to about 450 million in 1987. This growth has been accompanied by airspace and airport congestion, lost baggage, flight delays, work force problems, and highly publicized reports of close calls in the air and aviation tragedies. We believe it is important to recognize that limitations exist on what FAA can do about some of these conditions and that others share in the responsibility. For example, the airlines set the level of service consumers receive and are responsible for schedules that in some instances create backlogs at peak periods. And the Department of Transportation, not FAA, is responsible for enforcing consumer protection rules for lost baggage, bumping, unrealistic scheduling as well as for reviewing airline mergers. Thus, FAA does not act alone in carrying out its mission of promoting air commerce and ensuring safety.

VARIETY OF ISSUES GIVES RISE TO PROPOSALS TO RESTRUCTURE FAA

Proposals for changing the ground rules under which FAA operates have come from Members of Congress, the executive branch, presidential commissions, and the aviation community. The principal objective of the proposals is to give FAA more autonomy over managing its procurement, personnel, and budget and thereby better position FAA to meet the challenges of a growing aviation industry. Reasons cited for why change is needed include:

-- Federal procurement procedures are too slow to allow FAA to keep abreast of current technology.

-- Personnel rules do not permit FAA to correct significant work force shortages, especially in high cost locations.

-- The Office of the Secretary of Transportation is perceived as managing FAA's operations.

-- The lack of a guaranteed and continuous stream of sufficient funding hampers effective management and planning.

We will discuss each of these conditions in turn and what the findings of our work suggest regarding improvements to FAA's ability to meet the challenges of the 1990s.

Acquisition Delays

The FAA is modernizing air traffic control equipment and facilities through a program called the National Airspace System Plan--one of the largest civilian procurements ever undertaken. Initiated in 1981, the plan provides for a complex overhaul of the ATC system, including new radars, computers, and communications systems. Six years into the plan, costs have risen and significant schedule delays have occurred. Estimated at about $12 billion in 1981, ATC modernization could now cost as much as $24 billion by the year 2000. Project delays to major NAS Plan systems range from 2 to 6 years when comparing FAA's initial 1981 plan with its current implementation dates. As a result, benefits of the NAS plan--greater ATC system productivity and significant economic and safety gains for the airline industry--are being pushed further into the future.

However, our work shows that, to date, delays have resulted primarily from unrealistic initial schedules and problems in developing new technology. If FAA were to follow more closely Office of Management and Budget's (OMB) guidance on acquiring the most costly and complex systems, we believe that cost and schedule risk would be reduced and initial reliability of fielded systems would be enhanced. Regardless of whether FAA is exempted from federal procurement rules, its technology development and systems acquisition process needs to be strengthened.

Causes of acquisition delays. Our work indicates that the delays experienced in developing systems are related to FAA's underestimating (1) the complexity of highly-automated systems, (2) the time needed to develop system software, and (3) the interdependencies among systems. FAA has testified to this as well. In addition, FAA acknowledges that contractors have been unable to perform as planned and scheduled. The delays in implementing the automated $511 million Flight Service Station project is a case in point. Computers were stored for several years because the needed software was not ready. Other major systems whose schedules suffered because of contractor development problems include the $5 billion Advanced Automation System, the $556 million Voice Switching and Control System, and the $489 million Mode S.

FAA's original 1981 NAS plan raised the expectations of the aviation community as well as the Congress because of the highly optimistic schedules and projections it contained for ATC modernization. In addition, the basic concepts for many systems were flawed and this problem was not addressed until FAA hired a systems engineering and integration contractor in 1984 to assist in technically managing the plan and identifying changes needed to correct initial design inadequacies. Not having a solid design at the outset resulted in underestimates of the time needed to develop and install systems, the funds needed to correct design deficiencies, and the personnel needed to install delivered equipment.

In our opinion, FAA's acquisition difficulties in developing NAS systems are not primarily related to the agency being encumbered by procurement guidelines or rules--such as OMB Circular A-109--under which FAA is encouraged to acquire its most significant facilities and equipment (see attachment 1 for acquisition flow chart).[1] Rather, FAA's acquisition problems have been due to inadequate planning and an underestimation of the time needed to develop complex technology. Moreover, our work shows that FAA has not always followed OMB's recommended approach and, for many major NAS plan systems, FAA bypassed the early development phases and went directly to full-scale development. This did not provide for validation of concept, requirements, or operational effectiveness and is proving costly for some systems. An example is FAA's Microwave Landing System where production was begun before the number and location of sites was validated, benefits demonstrated, and system prototype tested.

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[1] OMB Circular A-109 consists of four phases: defining requirements, demonstrating that these requirements can be met, developing a prototype, and full-scale development and limited production. This acquisition approach is important to assuring that the product being procured will meet agency needs and will work in an operational environment.

An example of an earlier attempt to reduce acquisition time by exempting an agency from federal regulations is the Warner Amendment. This legislation exempts Defense's acquisitions of "mission critical" computers and telecommunications from the Brooks Act--the governing legislation for procuring and using automated data processing resources in the federal government. As a result, the requirement to secure a delegation of procurement authority from the General Services Administration was removed. In a prior review, we found that there was little difference in the overall time needed to complete a sample of procurements conducted under the Brooks Act and those conducted under the Warner Amendment.[2] A point of commonality between the two approaches was the difficulty--and resultant time--experienced by Defense components in defining their requirements. This indicates that, regardless of the nature of the regulatory umbrella under which major procurement is accomplished, significant analysis and time are needed to identify needs, define an appropriate set of requirements, contract to satisfy those needs, and implement the product.

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[2] ADP Procurement: Warner Amendment Has Not Reduced Defense's Acquisition Time (GAO/IMTEC-86-29, July 31, 1986).

Ways to make FAA's acquisition process more effective. There are ways to make FAA's acquisition process less time-consuming more effective, regardless of whether FAA remains subject to existing federal procurement regulations or establishes its own. Common to many of FAA's major NAS Plan acquisitions is that system requirements and, in turn, the design of hardware and software were improperly defined at the outset. In our opinion, this is because some FAA project managers perceive that design problems can be fixed at a later point in time, even if they require modification during initial field testing. This can be costly and time-consuming because established designs have to be changed in the middle of production and installed units in the field have to be retrofitted. The installation of FAA's Flight Data Input/Output system is a case in point. Problems with the existing flight strip printers were identified as far back as the late 1970s. However, the replacement system is just now entering operation because of retrofitting needed to correct technical problems.

Another way to make the acquisition process more effective is to build in the time for testing systems before major commitments are made to buy equipment in significant quantities. This reduces the risk of acquiring systems that do not work as expected as well as the cost and time that otherwise might be needed for retrofitting. FAA recently adopted this practice when it altered its acquisition strategy for the Advanced Automation System by including more testing before field deployment. This should reduce risks and increase controller confidence that this new technology can work in an operational environment.

Work Force Shortages

FAA must manage a total work force of over 44,000 personnel to achieve its mission. Our work shows, however, that FAA has not aggressively pursued authorities available to it to solve some problems and that others are not related to the civil service system. FAA currently is examining ways to ensure that it has or obtains the flexibility it needs to address these problems. We believe the agency is on the right track in seeking ways to achieve this flexibility.

FAA is increasing its three major work forces--controllers, inspectors, and maintenance technicians. FAA has made progress in rebuilding its controller work force since the 1981 controllers strike and the loss of over 11,000 controllers. As of April 30, 1988, FAA had 9,081 fully trained controllers. FAA also has been hiring new inspectors and hopes to have a work force of about 3,000 inspectors by 1991. We found that until 1984, FAA had taken few steps to monitor and address the impact of deregulation on the effectiveness of its inspection program. In fact, FAA cut its inspector staffing just when the number of airlines and aircraft were growing substantially.[3] Similarly, FAA prematurely reduced staffing for the maintenance of air traffic equipment in anticipation of productivity benefits which did not occur because of NAS Plan schedule slippage.[4] In its fiscal year 1989 budget, however, FAA requested increases for all three work forces.

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[3] Aviation Safety: Needed Improvements in FAA's Airline Inspection Program Are Underway, (GAO/RCED-87-62, May 19, 1987).

Recognizing the need to improve its human resource management, FAA has recently undertaken initiatives with a view toward developing and implementing specific solutions to personnel problems, either through improved management, Office of Personnel Management (OPM) waivers, or legislation.

Civil Service hiring process. FAA depends on OPM to administer controller aptitude exams, examine qualifications of maintenance personnel, and conduct security investigations of prospective employees. These services can be time-consuming and this time impairs FAA's ability to hire high-caliber air traffic controller candidates. OPM handles FAA's prospective employees are handled on a first-come, first-served basis along with applicants for other government jobs. Currently, it takes about a year from the time a person takes the OPM exam until an individual enters the FAA Academy's controller screening program.

In August 1988, FAA will begin a streamlined controller hiring process, including initial security screening and administering the controller aptitude exam. FAA believes this new process, combined with other planned actions, will reduce the time to hire top notch controller candidates to about 2 months. If this program proves successful, it will be expanded to other FAA occupations.

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[4] FAA Staffing: Challenges in Managing Shortages in the Maintenance Work Force, (GAO/RCED-87-137, September 25, 1987).

While FAA's initiatives should assist in expediting controller hiring, other authorities are available to FAA which could assist in attracting and retaining high-caliber personnel and which FAA has not aggressively pursued. Among these are special pay rates to make federal employment competitive with the private sector and authority to hire personnel directly rather than going through OPM.

Pay and classification. Of particular concern to FAA has been the issue of pay and classification for its work forces. The Department also points out that current salaries and benefits fail to attract and retain controllers at the busiest facilities, which usually are located in the higher cost-of-living areas.

In early 1988, FAA began a comprehensive review of pay, classification, and benefits for those involved with air traffic control. This study, expected to be completed in the fall 1988, may lead to specific changes in pay policies and legislative proposals. The Secretary of Transportation's Task Force on FAA internal reforms has recommended that FAA's pay study be expanded to all FAA safety-related occupations. The Department also is proposing a demonstration project to evaluate potential incentives for difficult-to-staff facilities.

Staffing standards. We found that one of FAA's principal personnel problems does not relate to personnel rules. Specifically, FAA needs to improve and use a key management tool--staffing standards. FAA needs a sound basis for estimating its staffing needs and deciding how many people it should hire, but currently it cannot say with confidence how many people it needs to carry out its mission. FAA's controller staffing standards underestimate needs because, among other things, they do not provide sufficient staff to cover peak traffic periods. The agency is currently re-examining its staffing standard for airport terminal staffing. Although better designed than the controller staffing standards, FAA's maintenance staffing standard has not been used as the basis for FAA's budget requests.

Both staffing standards also understate requirements because they do not provide for an adequate pipeline of trainees to replace those leaving and to meet future needs. Both controllers and maintenance personnel require several years of training before they can carry full work loads. Many of these employees are currently eligible to retire. Thus, to provide for smooth NAS operations, FAA needs enough individuals in training now so that fully trained and experienced personnel will be available to replace those who retire.

Department of Transportation Oversight

We recognize that the appropriate level of departmental oversight can be a question of management philosophy and that instances have occurred when the Department's involvement in FAA affairs was perceived as micromanagement or where the manner of the Department's involvement was not considered constructive in tone or supportive of FAA morale. For the longer term, however, we believe it is important that the constructive and beneficial side of cabinet-level oversight should be considered in the debate about whether FAA should be a part of the Department.

Much of the Congress' reasoning when it placed FAA within the Department 22 years ago was to promote a unified transportation department that would foster integrated planning and policy-making among the modes. While the extent to which this has been achieved is certainly open to debate, it is not clear to us how this objective would be achieved if aviation--the fastest growing mode of transportation--is removed from the Department. For example, an urgent aviation matter that requires integrated planning and financing among several modes of transportation and several levels of government is the construction of new airports and runways and the highways, light rail, and mass transit infrastructure that so often is required to support them. We believe it is important to consider whether an FAA outside of the Department will encounter greater difficulties marshalling and coordinating the resources and intergovernmental political support necessary to meet this cross-modal challenge.

In addition to these longer term considerations of transportation planning and financing, we have observed numerous instances where there was a constructive and useful side to departmental intervention into FAA's affairs. This involvement covered matters ranging from critical safety issues and accurate disclosures to the Congress to more mundane procurement issues. Secretary Dole, for example, appointed a number of "white glove" task forces, including two which focused on FAA's airline inspection and security screening programs. This oversight was instrumental in FAA taking a more rigorous and comprehensive approach to aviation security and the air carrier inspection program. In addition, as a result of action directed by the Department, FAA is reporting to the Congress more accurately on its air traffic controller staffing. In the procurement area as well, the Department played an important role in the decision not to proceed with a planned second procurement of 500 microwave landing systems until the system is tested in a way that demonstrates it will meet the needs of the aviation community.[5]

Funding Considerations

Funding needs for the NAS Plan as well as FAA's work forces will intensify greatly over the next several years. Only one of the plan's 12 major systems--the Host computer--is nearing completion. As more systems reach the implementation stage, more funds will be required. As we testified before the House Transportation Subcommittee on Appropriations in April 1988, the costs of ATC modernization are likely to increase from the FAA's current $15.8 billion estimate to at least $24 billion by the year 2000. Further, all of FAA's major work forces are being increased, in most cases substantially, and significant funding will be required to cover these increases. If FAA is to meet the challenges it faces, such as ATC modernization, increasing air carrier surveillance, and ensuring an adequate and trained work force, it will need to request and receive a predictable and sufficient flow of funds.

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[5] Microwave Landing Systems: Additional Systems Should Not Be Procured Unless Benefits Proven (GAO/RCED-88-118, May 16, 1988).

Due primarily to slower than expected progress in the NAS Plan, the Aviation Trust Fund, which is the funding source for capital development of the nation's air transportation system, was projected to have a surplus of nearly $5 billion for fiscal year 1987. This surplus will be needed in the years ahead. Further, the various FAA work forces must compete for funding with other federal programs because (1) the fund does not take in enough revenue to cover all work force salaries plus projected NAS Plan needs and (2) the Trust Fund legislation significantly restricts the fund's availability to cover these costs. Annual Trust Fund revenue is less than $4 billion a year, which would not cover FAA's fiscal year 1988 estimated outlay of about $5.3 billion.

The President's Aviation Safety Commission report provides an analysis of the effects of a proposal for greater use of the Trust Fund to finance all FAA costs that are the result of commercial and general aviation aircraft using the Nation's air navigation system. This would include most work force salaries and expenses. The report concludes that any significant change in the role the Trust Fund plays in the financing of FAA outlays will quickly eliminate the annual surplus; consideration, the report adds, will have to be given to changing the current tax and fee structure.

We believe this proposal deserves consideration since it would provide a stable, all-inclusive funding source for FAA operations, financed entirely by those who use the aviation system. This proposal corresponds closely to one of several options we provided in our 1986 report on the Aviation Trust Fund in which we suggested several formulas for reducing the unused balance.[6] While a change of this type clearly would require legislation, it could be accomplished within a framework that retains congressional authorization and appropriation oversight.

We recognize that widespread concern exists that Trust Fund spending will be restricted due to the pressure to reduce the deficit, and that these concerns could persist even if the fund were made available to finance all FAA operations. However, concern over the trust fund operations are not confined solely to the Aviation Trust Fund. Fiscal year 1989 budget documents show that over 150 trust funds existed governmentwide in 1987. Other trust funds, including those related to Social Security, also have surpluses, and under the unified budget trust fund surpluses are offsetting a portion of the huge deficit on the non-trust fund side of the budget. In our work on budget issues, we have become increasingly concerned about the extent to which trust fund surpluses under the unified budget "mask" the severity of the deficit on the non-trust fund side of the government's operations. Specifically, the $150 billion total deficit reported for fiscal year 1987 does not reveal that the non-trust fund deficit was actually $223 billion, offset by trust fund surpluses governmentwide of $73 billion.

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[6] Aviation Funding: Options Available for Reducing the Aviation Trust Fund Balance (GAO/RCED-86-124BR, May 21, 1986).

We are preparing a report on this problem, and will be including suggestions on structuring the budget to facilitate analysis of the budget relationships between trust and non-trust operations. We expect to issue this report in June.

CONCLUSIONS

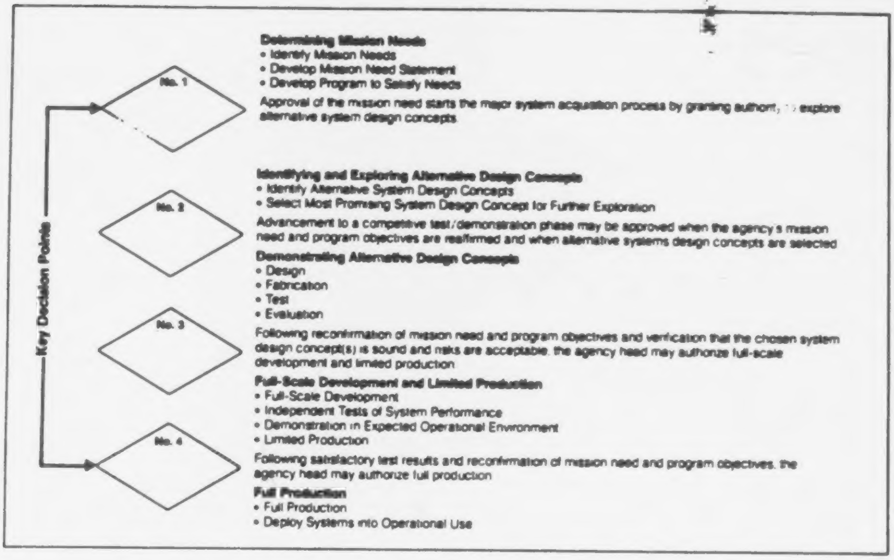
Based on our work, we believe that actions such as making FAA independent of DOT or exempting the agency from procurement and personnel rules will not in themselves be sufficient to address the underlying work force and NAS Plan acquisition problems. For example, considerable time is required to fully train new staff for FAA's work, and this would be a factor for the new FAA, just as it is now for the current FAA. Modernization of the ATC system has been delayed primarily because sophisticated technologies need to be developed and shown to work together reliably. A systematic approach to technology development will be needed whether or not FAA is part of DOT and regardless of whether procurement regulations apply. Similarly, an independent FAA would have to cope with the airport capacity and runway constraints now being dealt with by FAA air traffic controllers, as well as with the resulting congestion and delays.

We are not in a position to say whether an FAA independent of DOT would deal with the work force and NAS Plan problems better than the current FAA. As our testimony indicates, however, we believe the beneficial side of DOT oversight also should be considered in the debate over whether the longer term interests of transportation policy and aviation would be best served by an independent FAA.

Finally, a major issue we see as critical is funding. If work force shortages are to be addressed effectively and ATC modernization to proceed as planned, considerably more funding will be needed both in the immediate future and for the long term.

This concludes our statement. I will be pleased to address the Subcommittee's questions at this time.

Basic Major System Acquisition Process



Determining Mission Needs

- Identify Mission Needs
- Develop Mission Need Statement
- Develop Program to Satisfy Needs

Approval of the mission need starts the major system acquisition process by granting authority to explore alternative system design concepts.

Identifying and Exploring Alternative Design Concepts

- Identify Alternative System Design Concepts
- Select Most Promising System Design Concept for Further Exploration

Advancement to a competitive test/demonstration phase may be approved when the agency's mission need and program objectives are reaffirmed and when alternative systems design concepts are selected

Demonstrating Alternative Design Concepts

- Design
- Fabrication
- Test
- Evaluation

Following reconfirmation of mission need and program objectives and verification that the chosen system design concept(s) is sound and risks are acceptable, the agency head may authorize full-scale development and limited production

Full-Scale Development and Limited Production

- Full-Scale Development
- Independent Tests of System Performance
- Demonstration in Expected Operational Environment
- Limited Production

Following satisfactory test results and reconfirmation of mission need and program objectives, the agency head may authorize full production

Full Production

- Full Production
- Deploy Systems into Operational Use

This diagram depicts the process that OMB recommends federal agencies follow when acquiring major systems. Because of the built-in key decision points at which agency top management reviews and validates mission needs, system concepts, and test results, this process should minimize the cost, schedule, and performance risks an agency incurs as it acquires major systems. In the Department of Transportation, to qualify as a major system acquisition, a project must exceed $150 million in acquisition costs (or $25 million in research and development) or be considered critical to achieving an agency's mission.

GAO'S COMMENTS ON CONGRESSMAN GINGRICH'S QUESTIONS FOR THE RECORD

1. The Department of Transportation has been criticized for "micro-managing" and interfering in FAA affairs. On the other hand, you have cited instances where the oversight by DOT has been constructive and beneficial.

Notwithstanding the criticism that has been leveled at DOT, do you believe the benefits of DOT oversight outweigh any adverse effect?

ANSWER: In the course of our work, we have found instances where involvement by the Office of the Secretary in FAA's affairs has both helped and hindered FAA to achieve its goals. However, we have not evaluated the extent to which either case might be predominant and our response to your question is based on our general understanding rather than on a comprehensive knowledge of the Office of the Secretary's involvement.

Nevertheless, we do believe that, if exercised with discretion, cabinet-level oversight should be positive on balance and, therefore, that the benefits of this oversight should outweigh its adverse effects. In addition, we believe that the management oversight of FAA's regulatory and safety-related missions must be maintained, regardless of whether FAA is removed from the Department of Transportation. In particular, the modernization of FAA's air traffic control system--in terms of new equipment costs, human resource savings, and safety enhancements--requires management review that should objectively assess whether current and planned activities are beneficial, cost-effective, and responsive to the most critical air transportation needs.

2. Loss of cabinet level status has been cited as one reason why the FAA should not be removed from the jurisdiction of the Department of Transportation. Do you agree that making FAA independent would lead to less influence with the Office of Management and Budget?

ANSWER: No, we do not agree that FAA's influence with Office of Management and Budget (OMB) would change with making the agency independent. In fact, we believe that FAA's influence with the OMB depends less on cabinet-level status than on how FAA's programs and activities are financed. This is because, as we stated in our testimony, funding uncertainty and how the trust funds are accounted for in the unified budget is the most critical issue to be resolved in the current debate on how best to improve FAA's activities. As you are well aware, competing transportation modes vie for scarce resources to fund their activities that are covered by trust fund expenditures. FAA, though partially financed through the Aviation Trust Fund, is not immune to this competition and requires monies from the General Fund for operations and maintenance. Thus, we do not see FAA's influence with OMB changing until this financing issue is resolved, regardless of whether the agency is removed from the Department of Transportation.

3. Many of the delays in FAA internal matters have been blamed on the Department of Transportation. Do you have any knowledge concerning how many of these delays are in fact the result of the Office of Management and Budget review?

ANSWER: We have no knowledge concerning delays attributed to the Department which, in fact, are due to the Office of Management and Budget review.

4. It has been argued that the independence of the Federal Aviation Administration would create a "industry relief bill" which would be detrimental to the safety of the traveling public.

If we were to separate FAA from DOT, do you think any undue influence would be exerted on FAA by the industry?

ANSWER: Concerns about such undue influence by industry have indeed been raised. While we recognize that an independent FAA would better respond to the interests of the aviation industry, we cannot comment at this time on whether the aviation industry, or particular segments of it, would exert undue influence. We believe that proper oversight, including that provided by the Congress, will preclude the possibility of such a situation.

5. The frequent turnover of Federal Aviation Administrators over the past several years has worked against long range planning.

Do you see any benefit to establishing a fixed term for the FAA Administrator?

ANSWER: Yes, we believe that a FAA Administrator with a fixed term would have advantages, particularly with respect to the Administrator's ability to plan, implement, and evaluate long term projects. The attitude of "waiting it out" by FAA employees and industry accustomed to rapid turnover at the top would gradually disappear. It would give way to the realization that plans formulated during an administration will have the time necessary to be implemented while the administrator--the initiator of the plans--is still in office. In addition, the probability of more innovative long range planning would increase, thus making more certain the implementation of necessary short term transitional activities.

6. It has been suggested that a Federal Aviation Authority could be established. This authority would continually report to the Secretary of Transportation who would serve as the chief policy officer for the President in matters involving aviation. The Secretary would not be concerned with day-to-day internal operations, and the statutory authority for such activities would be lodged directly in the Authority.

Would it be possible to establish such an Authority making it answerable to the Secretary of Transportation only in part?

ANSWER: Details on the responsibilities proposed to be vested in the Federal Aviation Authority and the Department of Transportation have yet to be formulated. Thus, it is premature for us to comment on whether such an arrangement is possible. It seems to us, however, that separating day-to-day operational functions from policy activities--such as promoting aviation--is feasible. But solely removing the air traffic control function from the current organization structure would create significant problems for certain functions currently embedded in FAA. For example, would air traffic control also include the establishment of new air routes? Who would be responsible for ensuring that the changes comply with environmental requirements imposed on FAA? Although answers to such questions are not available at this point, it does appear possible to establish a workable Authority along the lines you describe.

7. Recently, the Secretary of Transportation created a task force to recommend internal reforms of the FAA. The task force has completed its analysis and has made certain recommendations to improve the operation and organization of the agency.

Do you have any general comments on these recommendations?

One of the recommendations concerns FAA's regional structure. It recommends basically that the regional structure be more centralized. Do you have any comments on this recommendation?

ANSWER: In general, we believe that many of the recommendations have merit, but we have not fully considered their many ramifications on the FAA's operations. Regarding the new regional reporting structure, we understand that FAA has implemented certain changes that should make headquarters oversight of regional activities more direct and centralized. We will not be able to comment in any detail on the effectiveness of this new structure until it has been in place for some time. We do believe, however, that the new structure will enable FAA to operate across its regional offices in a more consistent manner. This should provide for a more smooth and effective implementation of such nationwide programs as the National Airspace System Plan to modernize the air traffic control system.

8. The Aviation Safety Commission has recommended that the FAA be transferred from DOT and be established as a user-funded Authority overseen by a nine member Board of Governors. This Authority would be managed by an Administrator with a term of 7 years and also would include a safety "czar" who would have agency-wide regulatory oversight.

Do you have any comments on the Commission's recommendation?

ANSWER: We believe that the Aviation Safety Commission has raised many valid concerns about aviation safety. However, we are concerned about the relationship between the safety director, now labelled by some as the safety czar, and the Administrator. It is unclear whether the apparent cumbersome nature of the proposed management structure--an Administrator who is overseen by both a Board of Governors and a safety director--would improve the overall effectiveness of FAA's operations.

9. A number of bills have been introduced concerning reorganization of the Federal Aviation Administration. We would appreciate it if you would supply the Subcommittee with your comments and analysis of these bills which I would ask be made part of the hearing record.

ANSWER: Several bills have been introduced in both the House and Senate. Detailed comments on each of these bills would require intensive analysis and additional time to complete. We will be in contact with your office about the subcommittee's needs in terms of the timing and specifics to complete this task. Meanwhile, although our work to date has not focused in that area, our overall position is that (1) FAA's safety functions should remain governmental functions; (2) solutions should be found for FAA's procurement and personnel problems; (3) positive aspects of departmental oversight should not be dismissed; and (4) funding FAA's capital investments, operations, and maintenance is the major challenge. We see benefits in establishing tenure for the FAA Administrator or any equivalent position depending on organizational structure.

GAO'S COMMENTS ON CONGRESSMAN GINGRICH'S QUESTIONS FOR THE RECORD

1. The Department of Transportation has been criticized for "micro-managing" and interfering in FAA affairs. On the other hand, you have cited instances where the oversight by DOT has been constructive and beneficial.

Notwithstanding the criticism that has been leveled at DOT, do you believe the benefits of DOT oversight outweigh any adverse effect?

ANSWER: In the course of our work, we have found instances where involvement by the Office of the Secretary in FAA's affairs has both helped and hindered FAA to achieve its goals. However, we have not evaluated the extent to which either case might be predominant and our response to your question is based on our general understanding rather than on a comprehensive knowledge of the Office of the Secretary's involvement.

Nevertheless, we do believe that, if exercised with discretion, cabinet-level oversight should be positive on balance and, therefore, that the benefits of this oversight should outweigh its adverse effects. In addition, we believe that the management oversight of FAA's regulatory and safety-related missions must be maintained, regardless of whether FAA is removed from the Department of Transportation. In particular, the modernization of FAA's air traffic control system--in terms of new equipment costs, human resource savings, and safety enhancements--requires management review that should objectively assess whether current and planned activities are beneficial, cost-effective, and responsive to the most critical air transportation needs.

Mr. **Mineta**. I now would like to call on Mr. Ray Kline, President of the National Academy of Public Administration, to come forward.

Mr. Kline, your statement will be made a part of the record, and so you may go ahead and proceed in your own fashion, sir.

We appreciate your patience and forbearance.

TESTIMONY OF RAY KLINE, PRESIDENT, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. **Kline**. Thank you, Mr. Chairman. It's a pleasure to be here. I've been asked to comment on ways to improve the FAA's effectiveness in the context of congressional testimony I've given back in March, in front of another subcommittee, in terms of the future of the Federal public service.

When I was called by your Committee, I wanted to emphasize the point that I have not done any highly detailed or intricate studies of the FAA, and that my testimony, for whatever value it would be, would be of a rather philosophical bent. And I was assured that that would fit in. But having heard some of the prior witnesses, it certainly does emphasize the point that you have had people here who have penetrated the FAA culture with quite a bit of precision.

It's our strongly held belief, in the Academy, that the executive branch of the Government is not a monolith, not a single bureaucracy susceptible to one across-the-board way of doing business. But rather, it is a collection of quite distinctive organizations, or cultures, which are often in need of tailor-made management systems and procedures to meet their unique operating requirements. In my testimony back in March, I used FAA as an example, potentially as one of those types of culture, that if they have unique requirements they certainly should be encouraged to seek appropriate legislative or regulatory relief to make sure they have the kind of systems they need to do their job.

We've come to this conclusion in two kinds of ways. We did a comprehensive study back in 1983 on the key management processes of Government—budget, personnel, procurement and administrative services. And we found in reviewing with 12 departmental managers, to several levels, and also with some of the key agencies, that they indeed do want to find a way out of bureaucratic suffocation and micromanagement imposed by higher authority and move more into a direction of decentralized, tailor-made systems.

Since we did that study, we've been approached by a number of agencies, some at the request of Congress, to study particular cultures. For example, the 1987 Intelligence Authorization Act has invited the Academy to look at the intelligence community and its personnel processes to see if they're in the kind of shape that would prepare this country for the challenges facing that highly sophisticated community as we step into the 21st century. We're undertaking that study now, with a reporting due date of February of next year back to the Congress, as to what we've learned.

As far as the discriminators of tailor-made system requirements for cultures are concerned, we came up with a list, which I've provided in the testimony here: A specialized and highly skilled work force; unique and highly specialized installations and facilities;

unique employee mobility needs; broadscale geographic dispersion; special National security and safety requirements; special training requirements, and last but not least, the public service imperative—the particular requirements of that part of the public the agency is created to serve.

Any one and all of these seven, I think, clearly fit the FAA condition, and therefore, I think, sir, that your subcommittee is right on target in exploring whether or not the current organization structure and authorities governing FAA will allow it to function as effectively as it should.

I noted, in materials sent to me by the Subcommittee, that Secretary of Transportation Burnley identified five criteria he thought should be used against any proposed reforms for the FAA. And going over his list of five criteria—rigid personnel rules, obtrusive procurement rules, uncertainty of Federal appropriations, the adequacy of oversight and accountability, and the need for consistency in safety regulation—I believe all of these square with the studies our Academy's been doing, and what was also yielded in the across-the-board study that we did some time ago.

I note, based on the materials I've been sent, that the FAA's present location and administrative situation have been addressed variously by a number of groups. And I noticed, with some discomfort, because I fly on commercial airplanes, that the solutions vary, but all agree there's a problem. You had a bunch of experts on the Aviation Safety Committee, and they've come out and have said the air transportation system is safe, but the present structure is not good enough to ensure safety in the future—I don't know whether that's one year or one decade from now, and major structural overhaul is necessary, and the time for decisive action is now, and they underline the word "now."

Again, let me say, as a guy who flies commercial airplanes, I guess that does suggest that these safety experts should be listened to in terms of what some of those correctives should be. I don't know if the subcommittee is pleased or bewildered by the array of suggestions made in the difficult studies to correct the system. I notice that in some solutions the totality of FAA would be spun out of the Government, in others FAA would go out of the Department, and in still others, certain parts of FAA would go out and some responsibilities would stay in. And in other cases the totality of it would be kept within the Government.

Along that line, I am going to drop into your records, sir, if you don't already have it, a study that our Academy performed for the Air Transport Association 2 years ago, which came up with some proposals for the establishment of a Federal Aviation Authority which would keep the current functional composition together, would compose it as a proposed authority, keep it in the Department of Transportation, with the Secretary serving as the Chief Policy Officer for the President in matters involving aviation. And then finally, the authority would be headed by a single Administrator appointed by the President, and confirmed by the Senate for a 6-year term.

But turning to the subject of human resources management, based on materials I received, we notice that in both reports there is reference to problems associated with human resources management: geographic mobility, resulting in understaffing at some critical locations, competitive compensation problems with the private sector in some skill areas; lengthy hiring procedures; classification and pay disparities. I heard today that some people are convinced that some of these problems are being addressed under current authorities and may be on their way to solution.

But I want to underline the point that these are among the issues that have led other organizations, other cultures, to seek congressional authorization for demonstration projects that provide special authorities to improve hiring practices, simplify and streamline position classification, implement meaningful pay for performance to all levels, while providing broader, more flexible personnel management authority to managers.

I believe, based on the material I've seen, that in these particular areas like hiring, mobility, salary levels, the answers are not all the same when you look at the skill that compose the FAA. The answers may vary for air traffic controllers, in contrast to maintenance technicians, in contrast to pilots, in contrast to parts of the administrative support structure. But I certainly would recommend quite strongly that if this subcommittee finally decides that action should be taken to address the human resources problems of the FAA, that it not be done on a skill basis, but certainly be done looking at the FAA as one cultural entity, because I think the mission imperative of safety for the United States in the air has got to be dominant. And to break apart in any way, even perception-wise, the sense of teamwork necessary to meet that would turn out to be, I think, to the net detriment, not only of the agency, but to the country.

In summary, Mr. Chairman, we believe serious consideration should be given to creating additional flexibilities to assure that FAA has a capability to hire and retain the people it needs to fulfill its unique mission and organizational culture. One approach would be what some of the other cultures are doing, like the National Bureau of Standards, use existing research and demonstration authority with the cooperation of the OPM, the Office of Personnel Management. Another approach which may prove effective in the longer term would be to establish by statute a Federal Aviation Authority with the necessary authority not only in personnel management, but in the other kind of issues such as the procurement process that have come to your attention.

In arriving at the approach, and I think the Chair's been doing this, I think the problem has got to be attacked by working it from the inside out. And that is, first of all, is the agency using all of the authorities it now has, and using them effectively? Some of the answers I've heard earlier to some of your questions, sir, suggest that within their current authorities the FAA is now taking some action in some personnel management areas to do things they could have done some time ago, but for one reason or another haven't done.

Then having satisfied one's self on that question—are all current authorities being used—are there authorities at the departmental level that should be delegated to the FAA? This gets into the area of controls. I noticed just before my testimony began, withesses talked about delegation of additional procurement authority to the

FAA from DOT. DOT has raised the procurement thresholds, one example that addresses the question of management constraints imposed by higher authority procurement.

Having attended to the Department question, then I think, as it relates to human resources management, it would be appropriate to explore additional authorities from the Office of Personnel Management. The Director of OPM welcomes requests from agencies for additional delegations all the way—and these were mentioned by the group from the GAO—from the special pay rates to direct hiring authorities to a whole range of other authorities that do not require legislative relief to be obtained.

And if issues remain, having done those things—the agency is doing what it has authority to do, getting from the Department the authorities that should be delegated, receiving from OPM in the human resources management area the authorities that should be delegated from there—there may be other needs that only change of the law could provide. Consideration should then be given to undertake those kind of changes in law to give the FAA the kind of flexibility it needs.

This concludes my comments, sir, and I'd be willing to try to answer questions.

Mr. MINETA. Thank you very much, Mr. Kline. Just, out of curiosity, I was wondering if you were getting any inquiries given your name or any confusion with the former Deputy Director of the CIA?

Mr. KLINE. All the time, sir.

Mr. MINETA. Also Ray Cline.

Mr. KLINE. It's followed me my entire career. I thank God he's a C-L-I-N-E, and I'm a K-L-I-N-E, but I would imagine for the last 20 years, sir, we've occasionally been getting each other's phone calls and mail.

Mr. MINETA. Now, in regard to the Academy's recommendation that the FAA be allowed to hire and fix the compensation of employees with regard to the civil service laws, could you give us a general idea of how many other Federal agencies have this type of authority, and what types of compensations systems they've established?

Mr. KLINE. Yes, sir. I'd like to supply that for the record. And I would like to do it in two contexts. The first, this business about cultures can sound like philosophy, but when you realize that 40 percent of the Federal service is outside the classified system, that's a significant number, and this was done because of needs like groups like the CIA, and Postal Service and the National Security Agency, and similar kind of organizations of some size that are under other authority. I'd like to report back and give the answer in that context.

And then, secondly, in terms of those organizations that have moved into Government corporation form, which gets more directly to the question you're raising as to the kind of authorities they have, I'd like to provide something on that as well.

Mr. MINETA. That would be fine.

As far as the agencies that have the ability to fix compensation without regard to the civil service laws did those agencies have to have additional legislation, or were they able to do it administratively?

Mr. **Kline**. No, sir. That requires legislation. Here we're into the quasi-corporate form, Government corporation form or structure. That would flow with those kind of authorities. I don't think—I guess I should never say never, but I don't know of any case where an agency administratively has been able to do that. I think that in all cases it requires legislation.

Mr. **Mineta**. Well, what about this other, what is it called, National Resource Specialist, that was referred to by the OTA report? They felt that the FAA ought to expand on the national resource specialist and that that could be done without additional legislation.

Mr. **Kline**. I'm not familiar with their testimony. I haven't read that. I'd be very happy to comment on that for the record if the Chair would like.

Mr. **Mineta**. I'd like to have you——

Mr. **Kline**. Unless you'd like to describe it now, sir.

Mr. **Mineta**. I'd like to have you explore this concept of national resource specialist, as to whether or not the FAA could expand the number of people under that classification without any additional legislation.

Mr. **Kline**. All right, sir.

Mr. **Mineta**. Now, with regard to the Academy's recommendation that the FAA be headed by an Administrator appointed for a 6-year term, what provisions would there be for removal of the Administrator during the 6-year term? Do you see a potential downside to a fixed term in that we might be stuck with an Administrator who was not acting illegally, or otherwise creating grounds for dismissal for cause, but just wasn't doing his or her job as well as we'd like?

Mr. **Kline**. I think, sir, that the appointment would be for a 6-year term, but obviously, there would have to be provisions in there that in the event of dereliction of duty, or malfeasance, or similar things, that, of course, removal provisions certainly could be applied.

Mr. **Mineta**. Is there a provision, even with a tenured Administrator, that in the absence of malfeasance or some other illegal-type action that you could just remove the person for cause?

Mr. **Kline**. Yes, sir. That would be a provision as well. Yes, sir, for cause.

Mr. **Mineta**. Now, one of the recommendations of the Academy's study was that a new Federal Aviation Authority should continue to report to the Secretary of Transportation, who would serve as the Chief Policy Officer for the President in matters involving aviation. You state that the Secretary would not be concerned with day-to-day internal operations. I'm wondering how would you contrast this recommendation with the current relationship between the FAA and the Department of Transportation? I would assume that DOT would claim that under the current arrangement they only get involved with major policy issues and don't get involved with day-to-day operations, which don't raise policy questions. And I'm wondering, how do you see the current situation?

Mr. **Kline**. Yes, sir.

I guess it depends upon whom one talks to. I almost brought the panel chairman of our study along, who supervised the conduct of this study, to respond to questions of this type. One person's micromanagement is another person's policy direction, depending on where one sits.

During the course of this study, there were a number of, let's say at the transaction level, examples of the kind of penetration that took place into what this study team, this panel, regarded as the operational aspects of doing work, relating to the assignment of people, and other management directions to the FAA management.

I think the delegation of procurement authority is one example here, in terms of a penetration to lower levels. I think in the report itself, the point is talked about and I've entered that into the record, and I think there are some other examples in there as well.

Mr. MINETA. You know, right now we have a Federal Aviation Administration, we have the Department of Transportation, the Office of the Secretary of Transportation, with policy people. Now, the FAA is establishing policy in terms of its mode. The OST, the Office of the Secretary of Transportation, has their policy types. There's a Federal Highway Administration, and so the policy types are overlooking Federal Highway Administration.

I'm wondering if rather than doing what we have right now, if, let's say, we established an Assistant Secretary of Transportation for Aviation, an Assistant Secretary of Transportation for Highways, an Assistant Secretary of Transportation for Mass Transit, and get away from the Urban Mass Transit Administration, the Federal Aviation Administration, the Federal Highway Administration, and have these as, maybe, Undersecretaries, or Assistant Secretaries, under the umbrella of the Department of Transportation, under the Secretary of Transportation, I'm wondering whether or not that would prevent the micromanagement that is existing right now?

Mr. KLINE. I am reluctant to comment on it without having a much closer knowledge of that working interaction. But that certainly does flow in a structural alignment which is addressed more toward a policy kind of apparatus, then the kind of structure where there's the high potential for deep penetration on operational questions on a day-to-day basis.

I think that could have some attractiveness to it, yes, sir.

Mr. MINETA. Thank you.

Mr. Gingrich.

Mr. GINGRICH. Thank you very much for coming today, Mr. Kline.

On page 5 of your testimony, where you indicate that your Federal Aviation Authority proposal would still report to the Secretary of Transportation where the Secretary would not be concerned with day-to-day internal operations of the agency, given the way in which personalities in this city work, how would you demarcate that relationship?

Mr. KLINE. I think we've just been talking about that a little bit in terms of what constitutes day-to-day operations, and how one person's view of policy involvement is another person's view of micromanagement. In terms of the policy apparatus, the team that worked on this particular study had more of a working intermodal concern at the DOT level, in terms of the involvement of the Secretary of Transportation, and in terms of what's going on access the models of transportation.

On the other hand, the day-to-day internal operations, like the workings across the country at the air traffic control centers, and the things attendant thereto, the authorities for the hiring of people, the selection of managers, to look at that in a sort of a case-by-case in terms of the different functional entities. For example, in procurement, the thresholds that would be used, are they set at the appropriate level? In terms of the appointment of the key people within the Federal Aviation Administration, what kind of penetration would obtain there below that of the head of the FAA, does it go below the——

Mr. GINGRICH. If I could ask you, let me just stop you there a second.

You may have heard earlier our discussion about how many people an Administrator can currently appoint, functionally as well as dejure. Do you think there's a need for a greater number, for a larger team, appointed by the leader in that kind of an agency?

Mr. KLINE. I listened very closely, sir, to that discussion. In my last job before leaving the Government, I ran the General Services Administration. And when I went over there from an entirely different kind of culture, from NASA, the first thing that occurred to me was what kind of a ball club do I take along going to the new place in terms of having my own team around. When you look at it that way, and I looked at it quite selfishly, about having around me people I could count on for getting things done and implementing my objectives, that is one way of looking at it.

There's another side to the coin, in terms of something like the FAA or the GSA, or anything else, that one needs to attend. The average time a non-career appointee serves Presidential appointment wise is 21 months. They are in and out, and very often the support team moves in and out with their principal. That support apparatus doesn't necessarily stay behind to support the next political appointee coming in, and there's a drifting in and out that way. And the critical question is the one of continuity and stability at the subordinate levels in addition, on the other side of the coin to having people who are going to be indeed responsive to the new leadership coming in.

Being an old careerist, I give you a biased response. I find that the real tigers, careerist wise, at the top of organizations, a lot of them do a damn good job of following new leadership and getting with the team and getting things done. Our study of Presidential appointments found that the very large majority of those people felt that way, and the biggest problem they had was coming up that learning curve to learn that that was indeed the case, because coming in there is justified suspicion by the new person in charge as to whether this team is going to follow the new leadership. And then there is suspicion on the part of the team in place as to where this new leadership is coming from in terms of making the organization go, especially in operating agencies.

It's a tough question, and I think there has got to be some kind of a support group that works with a new incoming Administrator, and if you ask me how far down in the structure I would build that, I don't know if I could draw that line real well, knowing as little about the FAA as I do, at the top.

Mr. **Gingrich**. Let me ask you, with the Chair's indulgence, a couple more questions, because you're in a very critical institution for helping us think through some of these things.

Your suggestion, I want to make sure I understand what you just said, so I'm going to feed it back for a second, and tell me if I'm too far off. You're suggesting that while there's an advantage to having a small team that travels with the principal appointee, there's a usually a strong personality that brings his own immediate entourage, that there's also a very important institutional memory reason not to have too large a team come in at the top, is that a fair summary of one of the points you were just making?

Mr. **Kline**. Yes, sir.

May I give you an example of that. The need for continuity from the standpoint of bringing in a high tech system, which is going to run a span of 5 to 10 years to become operational at a cost of billions of taxpayers' dollars. To put that solely in the backs of in-and-outers, and not having a sense of ownership and commitment with very senior career people to drive that baby through, that is no small question to think about.

Mr. **Gingrich**. Now, let me ask you—you may not know this off the top of your head, but to take a parallel example, if the military sends in a new field commander to a fairly big institution, corps or above, do you know how large an entourage they're allowed to bring in as their immediate team?

Mr. **Kline**. Based on my personal experience, at a very, very senior level, very often they may influence bringing in their exec and one or two others, but in terms, let's say of the entire next echelon down, I don't know of any case, personally, where the top officers fills all the key spots.

Mr. **Gingrich**. Let me also ask you one other thing that comes to mind as I listen to what I think is a very lucid explanation on your part, of the problems both ways, the balance here.

Do you know of any effort inside the Government to go through, to develop a system for team building so that since we do have this routine bi-partisan problem, that you tend to get first class people for very short stints, a system where they would automatically come in and take that senior team, and their new entourage, and automatically go off for a 3-day or a 4-day team building process? I mean, is that something we should build in as a systems approach to this general problem?

Mr. **Kline**. Yes, sir.

I believe so, and I think it should start with the President.

Mr. **Gingrich**. Do you know, has anybody done this? I mean, is there any model for doing this, and has it been routinely by anybody?

Mr. **Kline**. There are selective cases. I know for a fact, having lived there, that in NASA, there were Administrators when I was there, I was invited to go along, who would assemble a team away from home, and he was obviously a political appointee—NASA never had a heavy penetration of political appointees—and take the ball club out there and do exactly what you said.

But this thing about working at a level where in terms of leadership, and the executive branch could help a lot, the President every once and awhile, will take the political appointees, down to the interdepartment auditorium and say, this is why we're in town, this is what we've got to do.

I think it would be splendid if every once in a while, the President would see fit to congregate, obviously not all at once, but the senior political appointees and the senior career appointees, and say, fellows, this is what we're in the Government to do——

Mr. GINGRICH. Yeah, because it's a joint—you're describing almost in the British model, an interaction between the senior civil service and the political appointee, that is much more of a synergism than we're used to.

Mr. KLINE. Yes, sir. Yes, sir.

Mr. GINGRICH. Now, let me just ask you two things. One is, if you have a chance to go back through the literature and can find me a couple of case studies of people who did this well, I would frankly like to look at them.

Mr. KLINE. All right.

Mr. GINGRICH. If you just get them through Mr. Ziegler to me personally, I would like them.

Second, you might contemplate developing a brief explanation of a proposed model of behavior for the initial team building process. Because we're likely to have in either party next year—I'm sure that the Chairman would be glad to get it to Mr. Dukakis, and I can get it to Mr. Bush, but we're going to have literally hundreds of people in appropriate places to look at that model of early behavior, that might accelerate the transition for either administration.

One last question. You suggest a 6-year term for the Administrator, yet earlier today we heard a number of different people suggest that political pressure, political awareness, political concern made a significant difference in the way FAA behaved. And everyone seemed to view it as actually a positive difference in this case, as compared to some other agencies where that couldn't be asserted.

Isn't there a grave danger that if you have a 6-year term that you minimize the effectiveness of precisely the intervention others said was positive?

Mr. KLINE. Of the——

Mr. GINGRICH. Of the intervention that other people said seemed to be positive, that is the ability of Congress and others to bring pressure to bear on a shorter term appointee. Doesn't the 6-year term create a kind of firewall against precisely the pressure the people said was effective?

Mr. KLINE. Yes, sir.

The team that worked on this study had a lot of difficulty with this particular recommendation. I know in my own experience to have someone appointed for a term longer than mine, in my organization, and expect to have the kind of response back managerially would have given me a lot of problems, and that's why I took this up with the team where they came up with this recommendation.

The answer I got back is that with a 6-year term, you do have a commitment to some stability with a leadership coming in. It does not mean that that leadership is going to thumb its nose at higher authority and go charging off on its own if you get the wrong kind of player there. There is always the principle for removal for cause if things are not working the right way, and as to how cause is being defined, of course, that can be attended to.

Mr. GINGRICH. I mean, I was going to say, if cause is the President's decision, I think that you have just eliminated the 6-year term.

Mr. KLINE. Yes, sir.

That's right, and what the perception, I believe, this team tried to convey, is that let's say upon the election of Dukakis, or Bush——

Mr. GINGRICH. Way to go. [Laughter.]

Mr. KLINE. And there is an Administrator of the FAA in there that it would not automatically be assumed that his days are numbered, or her days are numbered, that there would be a continuity that would run with that particular term. But everyone being a little aware, politically, as to how the world runs, that there could be a suggestion that someone step down.

The study team just wanted to put a bias in favor of some kind of continuity there, because of the nature of the FAA operation.

Mr. GINGRICH. Good.

Thank you very much. This has been very helpful.

Mr. MINETA. Mr. Kline, thank you very, very much for your presentation of your Academy's recommendations. We appreciate it very much.

Mr. KLINE. Yes, sir.

[Mr. Kline's prepared testimony and the Academy Report follow:]

STATEMENT OF

RAY KLINE
President

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

BEFORE THE

HOUSE SUBCOMMITTEE ON AVIATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

on

THE FEDERAL AVIATION ADMINISTRATION

June 2, 1988

Mr. Chairman and Members of the Subcommittee:

It is my pleasure to appear before the Subcommittee today. We have been asked to comment on ways to improve the Federal Aviation Administration's effectiveness in the context of congressional testimony we provided in March on the future of the federal public service.

It was, and is, our strongly held belief that the executive branch of government is not a monolithic bureaucracy susceptible to one across-the-board way of doing business. Rather, our government is a collection of quite distinctive organizations or cultures which are often in need of tailor-made management systems and procedures to meet their unique operating requirements. As necessary, such organizations, including the FAA, should be encouraged to seek appropriate legislative or regulatory authority to develop and to manage effectively their own program systems.

We have come to this conclusion on the basis of a comprehensive, 1983 Academy study of the key management processes of government -- budget, personnel, procurement and administrative services. The study found that agency managers want to find a way out of the bureaucratic suffocation and micromanagement imposed by higher authority and to move in the direction of decentralized, tailor-made systems that let managers manage and hold them accountable for results.

What are the discriminators that call for tailor-made systems? Here are a few:

1. First and foremost, a specialized and highly skilled workforce.

2. Unique and highly specialized installations, facilities and support structures.

3. Unique employee mobility requirements imposed by agency mission.

4. Broad scale geographic dispersion of people and facilities.

5. Special national security and personnel safety requirements.

6. Specialized training requirements for the development of managers and executives.

7. And last but not least, the public service imperative: the particular requirements of that part of the public the agency is created to serve.

We believe that FAA clearly falls within these discriminators and that the Subcommittee is right on target in exploring whether or not the current organization structure and authorities governing the FAA allow it to function as effectively as it should.

Recently Secretary of Transportation James Burnley set forth five criteria against which any reform proposal must be judged. We believe these criteria cannot be entirely satisfied under the current structure and way of doing business. Briefly stated, these criteria are:

1. the problem of rigid personnel rules that prevent efficient deployment of personnel;

2. the burden of obtrusive procurement rules that prevent the acquisition of new technology in a timely way;

3. the uncertainty of the federal appropriations process to ensure adequate resources on a long-term basis;

4. the issue of adequate oversight and accountability to ensure public safety;

5. the need for consistency in safety regulation and delivery of air traffic control services.

As you know, the FAA's present location and administrative situation have been addressed variously by the Air Transport Association, the Air Safety Commission, the Secretary of Transportation, and in bills now pending in the Congress. In 1986, a panel of the National Academy of Public Administration examined the FAA organization issue and released a report proposing the establishment of a "Federal Aviation Authority" supported chiefly by user charges and equipped with the powers and flexibility generally accorded government corporations. With the Chair's permission, I offer a copy of the report for the hearing record.

The Panel stressed that the enabling legislation should free the Authority from "detailed administrative and budgetary controls normally imposed on standard government agencies but inappropriate for a corporate entity." Specifically, the report recommended that the Federal Aviation Authority be empowered "to hire and fix the compensation of officers and employees in accordance with standards established in the corporation charter without regard to the provisions of the civil service laws and classification act." The recommendation is buttressed by the citing of several problems which have plagued human resources management in the FAA and which could be overcome or alleviated under legislation creating an authority.

We recognize that the granting of enhanced flexibility in the staffing of an agency does not of itself guarantee improvement in the quality and productivity of the work force. It would, however, make possible such things as a better balance between staffing and workload, enhanced pay flexibility, better support for training and management development activities, expedited recruitment and more appropriate and effective benefit and incentive systems.

I might add that the NAPA panel also proposed:

1. That the FAA organization be kept together and not broken up into separate air traffic control and air safety components.

2. That the proposed Authority continue to report to the Secretary of Transportation, who would serve as the chief policy officer for the President in matters involving aviation. The Secretary would not be concerned with day-to-day internal operations, and the statutory authority for such activities would be lodged directly in the Authority.

3. The Authority would be headed by a single administrator appointed by the President and confirmed by the Senate for a six-year term. The administrator would be assisted by an advisory board appointed by the President.

We have not had the opportunity to review in depth any of the FAA human resources management issues, but we do note that in the reports of the Aviation Safety Commission and the Secretary's Task Force there is reference to problems associated with geographic mobility resulting in understaffing at some locations, competitive compensation with the private sector in some skill areas, lengthy hiring procedures, and classification and pay disparities. These are among the issues that have led other organizations — other cultures — to seek congressional authorization for demonstration projects that provide special authorities to improve hiring practices, simplify and streamline position classification, implement meaningful pay for performance to all levels, while providing broader, more flexible personnel management authority to managers.

In summary, Mr. Chairman, we believe serious consideration should be given to creating additional flexibilities to assure that FAA has the capability to hire and retain the people it needs to fulfill its unique mission and organizational culture. One approach would be to use existing research and demonstration authority with the cooperation of the Office of Personnel Management, to design and experiment with a system tailored to FAA's needs. Another approach, which may prove more effective in the long run, would be to establish by statute a Federal Aviation Authority with the necessary authority and flexibility built into its charter.

This concludes our statement and we shall try to answer any questions.

Test-FAA/ttt
05/31/88

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

The Air Traffic Control System:
Management by a Government Corporation

A Study for the Air Transport Association of America

A Report by a Panel of the
National Academy of Public Administration

March 1986

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PRESIDENT'S PREFACE

In December of 1985, the Air Transport Association of America (ATA) asked the National Academy of Public Administration to undertake a study of the use of a government corporation or government enterprise as an organizational alternative to the existing Federal Aviation Administration (FAA). Currently, the FAA is a standard government agency, subject to all of the problems, constraints, and uncertainties that now characterize the federal executive establishment.

This report represents not only a source of advice and recommendations to the ATA, but a National Academy contribution to the broad question of when and under what policy conditions a government corporation represents a superior organizational approach to the management of an important public responsibility. This study was conducted by a Panel of Academy members, each with extensive experience in the design and management of government corporations (see Appendix A for biographies). The Chairman, Robert Moot, and Panel are to be congratulated for their work.

The report itself begins with an executive summary, which presents major Panel findings and recommendations, followed by four major chapters: (1) the purposes of the study, (2) the rationale for the use of government corporations, (3) the current problems of the the federal aviation system, and (4) detailed recommendations for the establishment of a Federal Aviation Authority.

Ray Kline
President

March 1986

PANEL CHAIRMAN'S FOREWORD

It is often difficult to be the advocate of change, especially when dealing with organizations or programs with histories of success and accomplishment. But times change, and it is important to be open-minded about how to keep organizations vital and effective. This is clearly true about federal government organizations, especially when the federal government is in a protracted period of exceptional budgetary stringency.

Budgetary factors and altered perspectives concerning the role of the federal government in transportation matters have affected the Federal Aviation Administration and its responsibilities for the national Air Traffic Control (ATC) system and for airport development. The ATC system puts the federal government in the role of a direct provider of a vital service to the flying public. Moreover, as described in this report, air traffic control is a "safety imperative" system. It is intolerable to diminish the safety, reliability and operational effectiveness of the system through substantial funding shortfalls or constraints on management imposed by the government's management and oversight systems.

Concern about the future effectiveness of the ATC system motivated the Air Transport Association of America to consider the feasibility of a government corporation as an organizational form for the future management of the ATC system.

This report flows from two basic assumptions about change: first, that any reorganization of FAA cannot add to the federal government's budget problems, and second, that it cannot jeopardize the reliability and safety of the ATC system. Within those boundaries, this report examines the missions, authorities, and responsibilities of a government corporation to assure both the operation of the ATC system and the planning and financing of the national network of airports. The Academy Panel concluded that a government corporation holds considerable promise for the future management of the airports and airways system — advantages that can be achieved without a loss of congressional or executive policy direction.

Robert C. Moot
Panel Chairman

March 1986

EXECUTIVE SUMMARY

This study examines the value and feasibility of a government corporation as an alternative to the present Federal Aviation Administration (FAA). The focus is on the future management of the national air traffic control system. As the Academy Panel conducted its work, the definition of the system was broadened to include FAA's role in the development of airports and its responsibilities in safety regulation.

After assessing current problems through detailed interviews, analysis of a variety of management indicators, and discussions with a sample of officials in the FAA, the Department of Transportation, the Office of Management and Budget, and the private sector, the Academy Panel concludes that there has been a general decline in the overall ability of the ATC system to perform at top effectiveness. As budgets and management systems become tighter, it will be increasingly difficult for federal agencies, including the FAA, to sustain a satisfactory level of management effectiveness. Because safety is imperative for the Air Traffic Control system, the public is entitled to ask "does the present organization, funding, and operation provided by the government offer the necessary level of performance now and into the foreseeable future?"

In answering this question, a Panel of the National Academy of Public Administration makes the following recommendations:

1. Based on its understanding of the history of congressional use of government corporations, and its own diagnosis of the problems facing FAA as a standard government agency, the Panel concludes that a government corporation would, if properly chartered by the Congress, offer substantial advantages over the current FAA in the management of the airports and airways program for the U.S. government.

2. Several alternatives for organization of the corporation were considered; however, the Panel suggests two alternative approaches. The pros and cons of both options are spelled out in the body of this report:

   First, the corporation could assume all of the responsibilities of FAA.

   Second, the corporation could assume all responsibilities except safety regulation, which would remain in a residual regulatory body within the structure of the Department of Transportation.

The National Academy Panel concludes that the most feasible alternative is the establishment of the Federal Aviation Authority as a government corporation that would assume all of the current functions of the FAA, (except the operation of the national capital airports). This Authority would require a specific charter, created by legislation, vesting in it the powers and missions that are defined in this report.

This Authority would retain the joint operational relationships with the Department of Defense (DOD) set forth in the Federal Aviation Act of 1958, and in Executive order 11161, which place the ATC system under the authority of DOD in war time.

Structural Guidelines

In addition, the Panel recommends the following structural guidelines for the statutory establishment of the Federal Aviation Authority:

1. The Federal Aviation Authority should be established as a government corporation reporting to the Secretary of Transportation, but it should not otherwise be in the Department of Transportation. Thus, the secretary would serve as the principal political and policy officer in assuring the accountability of the Authority to the President and to the Congress.

2. The Authority should be directed by a single Chief Executive Officer appointed by the President for a fixed term. The Panel recommends the establishment of an advisory board, appointed by the President, with members representing the principal aviation and user interests.

3. The Authority should be given the power to make grants and loans, and to provide loan guarantees to assist airport financing.

4. The Authority should be empowered to enter into contracts, acquire and dispose of property, sue and be sued in its own name, and prepare and maintain its budget and financial management in accordance with commercial principles, standards, and practices. As provided in the Tort Claims Act, "the authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346 (b) of this title, and the remedies provided by this title in such cases shall be exclusive."

5. The enabling statute should free the Authority from detailed administrative and budgetary controls normally imposed on standard government agencies, but inappropriate for a government corporate entity. It should have the authority to determine the character and necessity of expenditures and the manner in which incurred, allowed and paid, subject only to a limited number of laws specifically applicable to government corporations.

Financing For The Authority: ATC Operations

The Authority would assume responsibility for operation of the ATC system, as well as the implementation of the airport development plan as approved by Congress. Assets of the system and the capitalized unobligated balance in the Airports and Airways Trust Fund would be transferred to the Authority.

In order to create an organization that can be justified as a government corporation, and to ensure that the corporation can function in a business-like manner, the Panel recommends that the Authority propose and administer a system of corporate user charges in lieu of the present tax and trust fund mechanisms.

This approach offers several major advantages:

1. It would recognize the real user fee nature of charges, and would be consistent with Administration policy to seek out legitimate opportunities to shift the cost of government services to specific user groups.
2. It would relieve the federal government of collection responsibilities on a major tax.
3. It would relieve the federal budget of a large appropriation at a time when this is a critical concern.
4. It would enable the corporation to borrow from the Treasury to finance major capital investments and to repay such loans from revenues.

Congress will need to define the policies, standards, and guidelines governing such a rate system. In addition, the Panel recommends that the Secretary of Transportation be given approval authority over the specific rate schedules prepared by the Authority.

Financing For The Authority: Airport Development

In creating the Authority, Congress would have an opportunity to make a greater contribution to airport development, particularly by vesting the Authority with innovative financing options. To meet this challenge, the Authority could take one or more of the following actions:

1. Substitute user charges for the tax revenues flowing through the Trust Fund.
2. Continue the present grant program if Congress desires, using appropriated funds. This could be done either by Congress authorizing the continuation of the present formulas for fund allocation, or by giving the Authority a block of contract authority to place such grant funds where they would be most needed.
3. Make interest bearing loans for airport development to local governmental public bodies.
4. Make guarantees of borrowing by public bodies to finance airport development and charge fees for such guarantees. Congress could define policies establishing limits on the total amount of such guarantees outstanding at any one time.
5. Under defined conditions, act as a secondary market for obligations issued by local airport authorities.

Summary

The National Academy Panel concludes that a government corporation has the potential to provide enhanced operational effectiveness and system safety and reliability in an era of rapidly growing traffic and intense competitive pressure. Further, the traveling and shipping public would both pay for the services and reap the benefits. The Authority would expand and enhance the ability of the federal government to participate in the planning and financing of the national network of airports, in partnership with state and local governments, without adding to the federal government's budget or deficit reduction problems. These advantages can be achieved within the framework of ongoing political and policy direction and control by the Congress and the Executive Branch.

I. PURPOSE OF THE STUDY

As the nation approaches the tenth anniversary of airline deregulation, the need for flexibility and responsiveness in the management of federal aviation programs has never been greater. The question is how to achieve that flexibility without hurting reliability. This study was designed to examine the feasibility of a government corporation as an alternative to the present Federal Aviation Administration (FAA) for managing the nation's Air Traffic Control (ATC) system and related programs.

The use of a government corporation or authority is an organizational question. Because of technical, economic, policy, budgetary and management issues, and because both the air traffic control system and the federal government are in a period of change and uncertainty, the question of alternative structures is critical.

The following examination deals with two different concerns. The first involves what is usually called the ATC system — that is, the procedures and techniques for the management and control of the take-off and landing of aircraft at airports, and the control of aircraft enroute from one destination to another. The ATC system is a joint program involving both civilian and military flights, thus involving the Department of Defense as well as the FAA. In order to control air traffic, air space must be managed, not only enroute to destination, but in the vicinity of airports and military installations. In addition, the system includes the important collateral roles of safety regulation, definition of operational flight rules, and installation, maintenance, and repair of equipment and facilities. Obviously, a crucial element of the ATC system is its people — the air traffic controllers and the technicians.

The second issue involves a broader concern for the development and operation of airports, and the relationships among airports, air traffic control, aircrafts, and crews. The Panel decided to consider the total system precisely because it is a system of mutual relationships between airports, airways, aircraft, and the regulations that guide their use. Because all are interrelated, they must be examined together.

Commercial aviation is a vital national resource. After a 12 percent annual growth rate over the last two decades, current estimates show future annual increases in commercial aviation of about seven percent annually through the year 2000 and beyond. Commuter services will grow most rapidly. Airports increasingly will be the critical element of the total airport and airways system. As such, there is a growing concern about how the national network of airports will keep up with this persistent growth. By the turn of the century, 12 to 19 of the nation's 24 current major airports are likely to be severely congested. In addition, another 15 to 20 of the next most active airports are expected to experience serious congestion.

Although there is some federal funding through the Airport Improvement Program (AIP), airports are financed primarily by state and local governments and airport authorities — many of which are themselves government corporations. Consequently, the evolution of the national airport network is subject to the local politics and the finances of hundreds of governments. (Most of the local funding is underwritten by certificated airlines and other airport tenants). It seems reasonably certain that many local communities will experience difficulties in building or enlarging their airport facilities to meet future needs, especially during a period in which a higher level of financial participation can not be expected from the federal government. The ATC system will also be hard-pressed to keep pace with the rate of expansion. Not only will there be greater volumes of activity across the system, but many cities will experience greater demand during specific seasons and times of day.

Thus, congestion is a serious future concern for both airports and the ATC system. As traffic grows, greater reliance is being placed on technology to meet the problem. As traffic volumes increase, flight control — including enroute control, take-off, and destination access control — will become more sophisticated, centralized and integrated. More general aviation traffic will come under instrument flight rules. (Indeed, general aviation is expected to account for one-half of the flight control workload over the next decade.) More sophisticated instruments will be needed to permit maximum take-off and landing spacing at crowded airports. Further, more reliance will be placed on pilots and their newer cockpit instruments, which, in turn, will shift a greater responsibility for air traffic control to the air carriers themselves. General aviation users may find that crowded skies will demand more technological sophistication on their part, too.

The problems of crowded airports are, of course, less responsive to technological solutions. Nevertheless, new concepts of flow management and automated ground traffic control might join dual runways and other improvements in facilitating solutions for the future.

What then are the problems involved in this Academy study?

First, there is a strong consensus on one point: the technology affecting air travel in the United States, and indeed the world, is in one of its most dynamic periods. This current and potential technological change is so rapid that it threatens to outpace the capacity of the government system to keep up. In some government programs, it might be tolerable to function with less than the best available technology, but for the air traffic control system, this is not permissible. The ATC system is a high-technology, high-performance operation with safety as the top priority. Any technological improvement that would provide greater public safety should be implemented as quickly as possible. Otherwise, those who fly are denied that extra increment of safety that must be the ultimate goal of public policy.

Second, in addition to safety, the future of the FAA raises economic issues. Congress has an impressive record of understanding and responding to the growing demands of aviation, but conditions change. At a time when steady growth in the need for airports and air traffic control are almost certain, the federal government has entered a period of chronic budget deficits and difficult, protracted conflicts over the allocation of available federal revenues. In this environment, federal aviation programs are competing for diminishing resources, and there are no assurances as to how the debates will be resolved. The years of rapid growth and the likelihood of substantial future growth in aviation have made the economic investments by federal, state, and local governments, and by the private sector large enough to significantly influence the whole economy. The federal budget for FAA alone will be more than $4.8 billion for fiscal year 1987 — not an inconsequential amount in the grand scheme of federal resource allocation.

Third, added to safety and economic impact, this report addresses growing concerns about efficiency. The current fiscal climate intensifies the need to examine the system to ensure that it is functioning efficiently. Such an examination should address the following questions:

- Is the system producing value in a cost-effective way?
- Is the current federal organization and management the best and most effective vehicle for the direction and control of the system?
- Should taxpayers continue to bear the same financial burden in the future that they do now, or are there more effective forms of cost-sharing?

Fourth, despite the history and achievements of the FAA, there are growing concerns that changes in the federal government are making it increasingly difficult for any federal agency to sustain a satisfactory level of management effectiveness. The FAA is not immune to these trends and forces. Some believe the agency is less effective now than it has been in the past, and that this trend will continue into the future. One set of problems arises out of the fact that federal government management systems have become more inflexible, complex, and demanding than ever before. Budgets for manpower and equipment are severely strained. Personnel staffing, training and employee development have been curtailed or neglected. Procurement procedures and computer acquisition are burdened with red tape, uncertainty, and delays. Decision-making has become more protracted and management has become notably less flexible and innovative.

These are government-wide problems that are especially detrimental to operational programs, where the ability to move quickly and to adapt to change is essential. The ATC system is one of the largest and most sensitive of the federal programs that provide direct service to the public. It can and should be self-sustaining in the provision of those services, and it should have the freedom to respond quickly to the demands placed upon it.

Ultimately, this study is concerned with the question of how the ATC system can assure and maintain the highest level of public safety. This is in part an issue of the regulation of safety, and how well that regulation is performed in the current organizational environment. But, as the discussion above concludes, safety also involves economic, financial, and management issues.

II. BACKGROUND: WHY GOVERNMENT CORPORATIONS ARE USED

A. Introduction

Congress has long recognized the need for alternatives to standard government agencies in the pursuit of public policies. As one such alternative, government corporations have proven most valuable where the public program needs to be run like a business — that is, where goods or services need to be provided efficiently and where the provision of those goods or services is subject to market forces. It is because traditional public agencies are not structured to perform in this manner that government corporations are used, particuarly where business-type functions are intended to be self-sustaining.

At the same time, public programs must remain responsive to public control, even when they are placed in corporations. This classic dichotomy — public accountability versus corporate freedom — has been at the center of the debate over whether and how corporate entities should be created.

While government corporations have many common features and attributes, there is no single format; each corporation must be specifically tailored to the unique needs of a given program. Thus, when the Congress sets out to create a government corporation, it must be free to innovate, to define its authorities and responsibilities in new and different ways. If creation is done carefully and intelligently, it substantially enhances the likelihood that the new corporation will be capable of doing its work well, providing the intended services efficiently and reliably.

B. Types of Government Corporations

In its 1981 study of government corporations for the U.S. Office of Management and Budget, the National Academy of Public Administration sought to classify government corporations. In examining the history and intent of a variety of corporate creations, a number of Congressional goals can be discerned:

- To provide authority to an organization to operate in the market-place in a business-like manner, so that the public institution can be competitive.
- To provide a public enterprise with a degree of operational flexibility not otherwise available to standard government agencies.
- To provide a system of financing and financial control specifically adapted to the requirements of business-type programs.
- To create organizations with special authority to conduct special kinds of financial, banking, or insuring operations that are inappropriate or difficult for traditional agencies.
- To extend the range of the public services that the government wishes to support or sponsor.
- To create an organization flexible enough to undertake rapid development of a new program or a new technology.
- To create a public organization to take over a failed private enterprise which needs to be continued in the public interest.

The scope, variety, and significance of the use of government corporations are substantial, and illustrate congressional willingness to consider the corporate concept if it promises improved management of a public program. It also shows that Congress is often willing to allow operational independence and flexibility if a program has operating and financial requirements significantly different from those of traditional tax-financed public programs. (A set of basic references on government corporations and on FAA is presented in Appendix B.)

III. AN ANALYSIS OF CURRENT PROBLEMS

A. The External Federal Government Environment

In establishing a Panel for this study, the National Academy called upon members with wide experience in the federal government, the Federal Aviation Administration, and the Department of Transportation (DOT). In conducting the research leading to final recommendations, members of the Panel and the staff conducted interviews with knowledgeable officials at the FAA, the Office of the Secretary of DOT, the Office of Management and Budget, public interest groups, and others in the private sector.

After detailed assessment of current conditions in both the aviation industry and the FAA, the Academy Panel concludes that there has been a general decline in the overall ability of the ATC system to perform at top effectiveness and to respond swiftly to the demands placed upon it. This decline is in overall management effectiveness, not in operational safety. If this deterioration is permitted to persist, it eventually will jeopardize the capacity to sustain the operational safety and the overall excellence of the system.

The Panel believes that the performance of the airports and airways system under the management inside the FAA cannot be fully understood without an appreciation for the impact of the political and policy environment of the federal government outside the FAA. In the Panel's view, that environment has become markedly worse, especially for the execution of operations-oriented activities of the kind administered by the FAA.

The federal policy process puts great pressure on program operations. Approaches to oversight and accountability tend to be too heavy-handed for field operations. In effect, real control has been diffused into a complex, confusing, and often kaleidoscopic array of authorities among FAA leadership, the Office of the Secretary of DOT, the Office of Management and Budget, the Office of Personnel Management, the White House staff, and several congressional committees.

At its best, the Office of the Secretary of DOT has provided strong policy leadership and has been an ally in helping tackle FAA problems. The Secretary is a member of the President's Cabinet, and usually has had the level of prestige and clout with Congress and outside interests to get needed political action. At its worst, the relationship has entailed meddling, micro-management, and conflicts of judgment which can delay decision-making and discourage initiative in the FAA.

Oversight from the Executive Office of the President is primarily that of the Office of Management and Budget. In recent years, deficits, fiscal pressure, and the mandated cuts embedded in the Gramm-Rudman-Hollings budget act have forced OMB into an institutional stance of finding ways to constrain budgets rather than forming balanced judgments reflecting the public's needs and interests.

Despite genuine sympathy with and understanding of the aviation world, Congress faces this same dilemma. As the range of federal programs expands and the demands for federal funds multiply, the competition for funds intensifies. In times of relative plenty, all things were possible. During the last decade, however, the federal budget has involved the allocation of scarcity. It is likely that even fully accepted programs will fail to receive all of the funding that is justified as necessary. With substantial deficits projected for years into the future, it is hard to see an end to fiscal pressures on even the most popular and critical public programs. The concern is that Gramm-Rudman-Hollings legislation will exacerbate the situation by producing more severe fiscal problems for unprotected federal activities.

Along with the White House and Executive Branch political appointees, Congress has also been a participant in another trend: the tendency of the political decision-makers to delve more deeply into the operations of federal government agencies. Clearly, Congress has the constitutional authority to concern itself with the administration of the programs that it authorizes and oversees, but this constitutional right is not the issue. Detailed legislative prescriptions, when applied to operational activities, restrict the management authority of political officers and professional administrators who normally direct these programs. This, in turn, can produce a loss of clear control and accountability, and a chilling of initiative and innovation because of uncertainty about who has the real authority. Sound strategic planning tends to deteriorate in the face of short term uncertainties and changes in direction.

B. FAA Internal Management Problems

These descriptions are not intended as comments on current political leadership, but as reflections about how program management in the federal establishment has become more complex, more difficult, and — in all too many cases — less successful. Many of the specific issues that plague FAA as described in the following summary can be more clearly understood if it is recognized how this pervasive federal government environment impinges on FAA's capacity to perform.

1. Problems of Policy Direction, Leadership, and Planning

a. Oversight Impact

FAA is a major agency within the Department of Transportation. In turn, DOT is part of the Executive Branch; the secretary is appointed by and reports to the President. Elements of the Executive Office of the President, notably the Office of Management and Budget, exercise oversight of FAA's activities on behalf of the President. Finally, Congress exercises its authority through policy formulation by legislation, funding control through appropriation, and program direction through oversight hearings, testimony, reports, investigations, and program evaluations.

Observers of this oversight process contend that it has become exceedingly diffuse and complicated. Yet, few would challenge the necessity for oversight at the public policy level. Rather, there is concern that detailed oversight can become a cause of poor organizational performance rather than a guard against it. The basic question is: Granting that policy direction is the legitimate province of the Congress and the President, where should oversight stop, thus leaving implementation in the hands of the managers? The frank view of many observers is that the line is blurred and that this vagueness causes a number of problems:

- A layering of oversight: at any given time and for any given issue, it may be unclear who controls a decision, and how long it will take to get the decision made.
- A degree of micro-management: external oversight is applied to detailed operational matters, small commitments of funds and specific detailed regulations. This means that the managers in operating organizations who would normally make decisions are often unable to take needed actions until external review and appraisal are resolved.

- Frequent changes of political leadership: even when excellent people have been appointed, the technical nature and demanding operational nature of FAA's work are not easy to grasp. The "learning curve" is long and steep and not all appointees travel it fully.
- Conflicts of judgment: conflicts and negotiation may be the essence of political decision-making, but they can cause problems for a program like the ATC system which demands planning stability and a high order of technical understanding in order to optimize performance, safety, and reliability of operations. While conflicts of views are inevitable and often constructive, such conflicts need to be resolved quickly and resultant decisions built into stable plans and operational groundrules. The concern is that conflicts of judgment have not been pursued with equal skill and knowledge at all levels, and frequently take place over minor issues which should not be in conflict at all. To the extent that this is true, conflicts of judgment are perceived as delaying and distorting decisions which should be made on their technical merits.
- Budget vs. management need: although this conflict exists in any organization, it is perceived as particularly important in government agencies, where it can be crippling to operational effectiveness now and into the future.

b. Planning

Congress has mandated several kinds of aviation systems planning: a research and development plan, the National Airspace System plan (NAS plan), an airport development plan and others. The FAA has worked hard on such plans, but the consensus is that the results have not been sufficiently comprehensive and penetrating, and that the integration of technology, program planning, and political decision-making has not been adequate.

The NAS plan is one example of this complex situation. Its very existence is an implicit acknowledgment that the system is becoming obsolete. Major infusions of new technology, new equipment, and new concepts are not being carried out through the usual annual budget cycle.

But the preparation and marketing of a multi-year, multi-billion dollar plan is enormously difficult in any government environment. The processes of building political consensus behind such a plan and all of its complex elements takes many years. Compromises can alter the intent of the plan, require more time for approval, and create greater rigidity in the plan itself. Even if plans are perfect at the time of approval, technologies may change swiftly, operational improvements may become available, costs may fluctuate, and the needs of the system may change.

These problems are now affecting the ATC system. Veterans of the NAS planning process fear that the rigidities of the federal planning cycle are so great, and the trauma of debating changes in the plan so substantial, that FAA may be "locked into" the current plan and may be unable to retain enough flexibility to respond to changes in operational reality. The NAS plan is often viewed as front-loaded — that is, it is trying to accomplish too much in its first few years which runs up the cost in the face of tight budgets.

In addition, there is a fear that the necessity to "stick to the plan" for the sake of political and financial stability might freeze out the introduction of expensive but valuable new technologies which could add to the safety and/or reliability of the system. Further, there is a view that the planning process should be closely linked to Defense Department's needs, that DOD should more actively integrate planning in its own services, and that DOD should assume a more active role in making its plans an integral part of a more comprehensive planning program.

c. Airport Planning and Development

The federal role in airport development is not dominant, largely because of the restricted range of federal participation (i.e., a limited grant-in-aid program) and an unwillingness to contemplate new strategies for fear that they might create new demands on the federal budget. Thus, while there is an airport development plan, it is not a plan for the evolution of a national network of airports driven by established needs and priorities. It primarily serves as guidance for the allocation of limited federal airport grant funds. Even here, during the first 15 years of their use, the funds have been applied at least 50 percent of the time to revitalize old and obsolete facilities and equipment rather that to construct facilities for future patterns of use. Observers feel that newer and faster growing needs, such as those for general aviation, commuter, and reliever airports, will not be met unless a more innovative overall strategy for airport development emerges from the policy formulation and planning process.

d. Approaches to Safety Regulation

The federal government's regulatory role in assuring safety in aviation is widely accepted. The FAA's regulatory responsibilities include the operations and procedures for the functioning of the ATC system, but go far beyond to include the safety of aircraft, air crews, and airports. These responsibilities include programs of aviation standards to assure the safe design, manufacture, and maintenance of aircraft, standards for aviation medicine and proficiency of air crews, aviation security standards, and standards for the operation of airports.

Despite wide support, especially among general aviation groups, for current levels of political oversight of FAA programs, such oversight can sometimes result in unintended consequences — in this case, rigid regulations and constrained operational flexibility. There is a growing perception that new concepts of general performance or "outcome" regulations would be superior to the current and growing body of detailed "means" or "how to do it" regulations.

The Academy Panel also recognized that safety must be regarded as an integrated system in which all elements must be coordinated to achieve maximum operational safety, reliability, and effectiveness. This operational integrity also means that regulations and operational rules which define safety requirements must also be integrated.

This concern was expressed in virtually every interview conducted for this project. It led to the Panel's conclusion that the full array of current safety regulatory responsibilities should be kept together in a single organization.

However, even with all regulatory authority united in FAA, there are still problems of coordination. While it is technically possible to draw distinctions between authorities which might pass to a corporation versus those which would remain in some regulatory body, the Panel believes that any such division would add further complexity to an already difficult task.

e. Research and Development

Observers fear that research and development at the FAA is becoming weaker. Further, there is little confidence that future budgets will provide the funds to upgrade FAA's R & D programs to advance the state of airports or the ATC technology. As a basic minimum, FAA must have the capacity to keep up with the technological revolution that is taking place in the private sector and in the Defense Department, in order to make intelligent decisions about what technological improvements should be incorporated into the NAS plan and at what pace. Deficit driven constraints on FAA's budget for R & D would be inconsistent with meeting the demands of the system.

It is important to note that the Defense Department, under the Federal Aviation Act of 1958, shares responsibility with FAA for the ATC system, both as a generator of new technology and as a demanding customer for the best technology available. Many military demands are more sophisticated than those of civilian aviation, and DOD should be a strong advocate for the development and adoption of the best feasible technology at the swiftest possible pace.

2. Problems in Operations and Systems Optimization

a. Staffing

One of the most serious deficiencies of government has been the failure to match personnel needs with work demands. Although the FAA makes workforce estimates a part of budget submissions, this linkage is often lost in reviews outside of FAA, thereby separating staffing estimates from program changes. This may result in staffing cuts or increases based on the budget. These cuts or influences often have no direct relationship to program demands or changes. The freedom from these artificial staffing constraints and the authority to set and adjust workforce levels to meet real program needs is one of the major advantages which a corporation can offer.

The history of FAA staffing has been mixed. Until the air traffic controllers strike, the FAA was widely perceived as overstaffed. Indeed, the problem appeared to be the unwillingness to trim the staff for economic or efficiency reasons. After the strike, both the DOT Secretary and the FAA Administrator testified that it had been possible — in fact almost necessary in the political environment of those times — for FAA to be overstaffed.

Since the strike, the situation has been exactly the opposite. The current perception is that FAA is somehow understaffed. This issue alone has become the source of much public conflict between FAA and its oversight organizations. The ATC system urgently needs to match personnel staffing to its workload and to maintain realistic staffing levels. The National Academy Panel noted that, once the Post Office Department was converted into the Postal Service, its new corporate freedom permitted it to have a more effective and efficient operation.

b. Personnel Management

In the re-examination of personnel and human resources management problems and practices following the air traffic controller strike, FAA leadership became more open about the problems of workforce management under federal personnel regulations. Problems that plague the system include:

(1) General patterns of overstaffing or understaffing.

(2) Problems of misallocation of staff — either in geographical terms or in terms of the mix of staff to match workload demand.

(3) Inability to swiftly move staff in order to cover shifting patterns of work need.

(4) Periodic but persistent lack of funds to provide employee training, retraining, skills upgrading, and management development.

(5) Lack of adequate flexibility in the use of controllers to meet peak demands.

(6) Inflexibility in the system to take disciplinary action or to transfer or remove unsuccessful employees.

(7) Inability to use innovative or even adequate employee motivation and incentive programs.

(8) Rigidity in pay rates and bonus arrangements, especially for employees in high stress occupations.

Constraints in the federal personnel system are neither fatal nor insurmountable, and FAA is currently involved in attempting to solve these problems. Still, the Panel concluded that federal personnel management leaves much to be desired, and that many of the negative elements of the system inhibit rather than encourage the pursuit of excellence, increased productivity and superior performance. This has been true for many years, nor does the Panel foresee any substantial government-wide improvement.

On this point alone the value of a government corporation has almost compelling merit. A corporation that is free to develop and use its own personnel system can be authorized to apply the best contemporary human resources management concepts and techniques from the private sector or elsewhere. Doing so would have two distinct advantages. First, it would create the opportunity and the tools to achieve more effective use of the total staff and to attain new levels of productivity and system-wide cost-effectiveness. Second, it would create a new and more vital work environment in which there would be greater opportunities for employees to advance and enhance their own skills and work satisfaction. Observers both inside and outside of FAA expressed concern that many of the agency's managers may soon leave for better paying and more attractive opportunities elsewhere. The corporation would have the potential to deal more effectively with this possible crisis.

c. Procurement

It is important that the FAA be in a position to contract effectively for computers, navigation and communication equipment, controller display consoles, technical and administrative support services, and a variety of other elements of the air traffic control system. While there is no question that the FAA has legal authority to enter into contracts, its recent history is marked by procurement delays.

The procurement system is structured by federal procurement statutes and regulations. This is another case of a well-intended management system gone awry. The FAA is sometimes criticized because of the slowness with which it converts the congressional approvals of the NAS plan into procurement contracts. While FAA shares some of the blame, the government's procurement system inhibits fast action.

As with the personnel system, the National Academy Panel is not persuaded that any rapid improvement in the government-wide procurement system can be expected in the foreseeable future. Thus, the Panel concludes that the corporation, if authorized to establish its own procurement policies and procedures, could develop a far superior approach to awarding contracts and effectively managing contractor performance.

d. Overhead

There is a related concern that FAA has invested too great a proportion of its total staff resources in overhead functions rather than in high productivity line operations. This concern is expressed in two principal areas:

(1) With respect to the heavy investment in regional offices, there is a concern regarding the impact of what might be too much independence, particularly because substantial differences are permitted in the operational practices from region to region with resulting confusion to users.

(2) With respect to planning, budgeting, personnel and procurement, there is a concern regarding the high cost of operating under federal management systems, particularly because huge investments of staff time are needed to deal with and support the red tape and time delays that the use of these systems demand.

The National Academy Panel is convinced that a properly chartered corporation could be more effective in solving overhead concerns.

e. System Optimization

In both its R & D and general management planning, FAA has examined ways in which the design of the ATC system could be optimized by changing the technology and the degree of automation, as well as the location and scope of its enroute facilities. Under current groundrules, it is extremely difficult to introduce changes in the overall system design, even when FAA is convinced that such changes would produce greater cost-effectiveness and system performance.

Many of these issues are regularly caught up in political oversight processes that tend to defend the status quo. A corporation could be used as the vehicle for re-examination of such constraints; it could be given the discretion to make adjustments within a general framework of congressional oversight and accountability.

C. Objectives and Major Options for a Government Corporation

There are seven objectives that can and should be pursued through the creation of a corporation to replace the existing FAA:

1. Expedite the modernization of the airports and airways system including both airports and the air traffic control system.
2. Stabilize the financing of this system and remove it from current high-risk conditions.
3. Enhance the autonomy of the entity administering the ATC system and to reduce the number and intensity of external approvals and controls.
4. Maximize the operational effectiveness of the system.
5. Protect and improve the capacity to define and enforce public safety regulation and system safety including airports, airways, aircraft, and the personnel involved.
6. Retain essential public policy direction and control, but permit maximum feasible latitude to achieve operational effectiveness.
7. Assure fairness and equity to users of the system.

RECOMMENDATION: Based on its awareness of the innovative history of the Congressional use of government corporations, and its diagnosis of the problems being experienced by FAA as a standard government agency, the Panel concludes that a government corporation would, if properly chartered by the Congress, offer substantial advantages over the current FAA in the management of the airports and airways program of the United States.

The Panel believes that the corporate concept warrants serious consideration. In order to derive maximum benefit from such a corporation, chartering legislation would need to be carefully drafted.

In general terms, the FAA has three roles: planning and development, operations, and safety regulation. The National Academy Panel considered many alternatives for corporate organization, responsibilities, and authorities, and believes that there are two options which should be considered regarding those roles. The first option is to keep all roles together in the proposed corporation, thus preserving the logic that combined them in FAA initially. These kinds of roles are now being performed by other government corporations such as the Tennessee Valley Authority. The panel is deeply concerned that breaking the FAA into an ATC system, an airport's corporation and a regulatory agency would cause problems of coordination and would seriously undermine the rationale for the corporation.

The second option is to conclude that safety regulation is different in character from development and operations, and that it can, therefore, be placed in an independent organization. There are precedents in the federal government (the Nuclear Regulatory Commission and the Merit System Protection Board) where the Congress has established an independent body to exercise public regulatory authority. Interviews conducted by the Panel and staff found almost unanimous agreement that the regulatory and enforcement authorities should be kept together in one organization with planning and operations. In other words, while a split of regulatory authority is technically possible, the need for integration and coordination of safety regulation is compelling. A split into different organizations might impair this coordination.

In either case, the Panel believes that airport development and the development and operation of the ATC system should be deliberately linked together organizationally, so that planning and development can be integrated. The Panel also strongly believes that a government corporation offers marked advantages in airport development, primarily in terms of its ability to do creative financing.

Because regulation development and enforcement are inherent parts of the system designed to foster safety and efficiency in aviation, this option is less attractive than the first. Dividing the FAA could have unforeseen consequences. The Federal Aviation Act of 1958 was designed to unify previously scattered federal aviation functions, and many of those consulted by the Academy Panel and staff expressed concern over a return to the difficulties of pre-FAA days.

The Panel recognizes that the corporation would maintain joint relationships between the civilian and military ATC systems as defined in the Federal Aviation Act of 1958. The DOD is both a user of the ATC system and a partner in its operation. It handles, with military controllers and equipment, a significant share of the total of air traffic flights, including some civilian flights. As a user, DOD should bear its fair share of the cost of the services it receives; however, DOD also absorbs part of the cost of the system. It was not possible for the Panel staff to determine whether DOD would be a net gainer or loser in a cost sense. In fact, it is doubtful whether current cost data are sufficiently specific to answer that question. But it appears feasible for the corporation and the DOD to enter into an agreement by which costs and contributions are netted out on an annual basis as a means for resolving funding issues.

It should be explicitly stated that the creation of a government corporation would not change the intent or the feasibility of Executive Order 11161 which provides that the ATC system would pass under the authority of the Department of Defense in war time.

RECOMMENDATION: **On balance, the National Academy Panel favors the creation of a Federal Aviation Authority as a government corporation which would assume all of the ongoing FAA functions (except the operations of the national capital airports). This Authority would require a specific charter, created in legislation, in which the Congress would vest it with the powers, authorities, and missions which are defined and discussed in the balance of this report.**

IV. GUIDELINES FOR THE STATUTORY DESIGN OF THE FEDERAL AVIATION AUTHORITY

A. Authority for Federal Aviation Authority

The title "Authority" is recommended for the corporation because of a long history of its use (mainly at the state and local levels, but also at the federal level; note the Tennessee Valley Authority) to designate organizations that have both governmental and commercial functions. For example, the Tennessee Valley Authority's non-revenue producing programs are financed by appropriations which are not subject to fiscal year limitations, and its power and other commercial programs are financed from revenues and borrowing. No distinction is made between revenue and non-revenue programs in the exercise of the corporate powers granted to Tennessee Valley Authority. This is the combination which the National Academy Panel proposes for the Federal Aviation Authority.

There is a commonly accepted group of authorities and capabilities that should be given to the Federal Aviation Authority, including:

1. Authority to retain and utilize revenues.
2. Authority to sue and be sued and to conduct litigation in its own name. As provided in the Tort Claims Act, "the authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346 (b) of this title, and the rememdies provided by this title in such cases shall be exclusive."
3. Authority to enter into contracts and to acquire and dispose of property in the name of the corporation without regard to statutes generally applicable to contractors and procurement by government agencies.
4. Authority to maintain bank accounts, either with the Treasury Department, or in private banks as approved by the Secretary of Treasury.

5. Authority to borrow for the statutorily defined purposes of the Authority. This authority might also include the capacity to borrow through the Federal Financing Bank at preferred rates enjoyed by the FFB. The Secretary of the Treasury must approve the timing, form, price and maturities of any obligations sold to the public.

6. Authority to make grants, to make loans, and to provide loan guarantees for airport development as authorized by the Congress.

7. Authority to submit a business-type budget as provided by the Government Corporation Control Act (GCCA). A business-type budget provides for the approval of the corporate program, but it does not limit the use of funds available to the corporation except for administrative expenses. (A copy of the Act in presented in Appendix C.)

8. Authority to determine the character and necessity of expenditures, except for laws specifically applicable to government corporations. This exempts the corporation from most of the regulatory and prohibitory statutes and disallowance of expenditures by the General Accounting Office (GAO). The GCCA provides for a commercial audit by GAO.

9. Authority to hire and fix the compensation of officers and employees in accordance with standards established in the corporate charter without regard to the provisions of the civil services laws and classification act.

10. Authority to acquire needed office space and to request General Services Administration assistance when the Authority determines that it is advantageous to do so.

These provisions will provide the operating and financial flexibility necessary for effective operations while maintaining appropriate accountability to the President and the Congress.

As a corporation, the Authority would not be subject to detailed "line item" reviews, and single year expenditure controls. It also should be exempt from personnel ceilings and other constraints deemed appropriate for tax financed federal agencies operating under standard government budget and appropriation rules. The Authority should be free to design management systems for itself, governed by what is needed to optimize its own effectiveness and to respond to the dynamics of its own situation. But that does not mean the abandonment of important principles and policies such as competition in contracting or equal employment opportunity. The Authority's enabling statute should also continue the current "no strike/no slowdown" provision for employees.

Finally, incorporation in and of itself merely alters legal status. It is critical that any corporation be equipped with those powers which are essential if it is to function on a business-like basis. Chartering a corporation with excessive administrative constraints would hamstring the organization from the very start and vitiate the very purposes argued for its creation.

B. Organization and Accountability

There are at least three major organizational recommendations in the structure of the Federal Aviation Authority:

1. The Authority should report to the Secretary of Transportation. In this manner, the secretary will continue to serve the role of the chief political and policy officer for the Administration in matters related to the activities of the Authority. Also, the secretary should be accountable to Congress for the oversight of the Authority's activities. It should be emphasized however, that under this arrangement, the secretary, by statute, would not be concerned with the day to day internal operations of the Authority which would be the responsibility by law of its CEO.

2. The Authority should have a single chief executive officer, appointed by the President with the advice and consent of the Senate for a fixed term, perhaps of six years. A deputy should also be provided who would be selected by the chief executive officer. The National Academy Panel strongly emphasizes that the Authority will require management of the highest order of executive, management, and technical

knowledge and experience, and it urges consideration of language in the statute which would call upon the President to appoint an administrator who possesses management and technical qualifications of the highest caliber.

3. The authority should have an advisory board of members appointed by the President, designed to represent the interests of the principal users of airports and airways, plus such additional members as are needed to give the board expertise in banking, aviation technology, municipal government, etc. Members of the board should be appointed for rotating fixed terms, and should be eligible for reappointment.

The Panel considered and rejected the option of vesting administration of the Authority in a Board of Directors.

The Panel believes that establishment of a governing board would generate problems not associated with reliance upon a single executive:

1. There is the considerable risk that the powers of such a board, in the government environment, would be difficult to define in two directions. First, in terms of the division of authority between the board and the Secretary of Transportation, who would really set policy or direct implementation? Second, in terms of the division of authority between the board and the administrator of the Authority, what constructive role could the board play which would not confuse or hinder the ability of the administrator to effectively manage the organization?

2. There is a long history, in federal, state, and local government corporations and authorities, of conflict over the composition of such boards. Where it is intended that the members be "representative" — i.e. representing certain specific interests — there is conflict over which interests are to be represented, how many such "seats" must be designated, and how to keep the board's total membership balanced. There is the further concern that such "representative" members may feel compelled to put their special interests first, and will not put the overall interests of the corporation in proper balance.

In summary, the statute should retain general policy oversight within the executive branch, but should specifically free the Authority from detailed administrative and operational reviews. The Authority should be defined explicitly as a government corporation, remain part of the federal government establishment, and be accountable to both the President and the Congress. Its employees should continue to be officers and employees of the United States government.

C. Airports and Airways System Development

1. Long-term Planning

The Panel concludes that the development of the ATC system should proceed within the context of the kind of comprehensive system-wide planning that does not now adequately exist. Such a plan would start with the future growth of air travel. This, in turn, would be translated into defined needs for airports — their location, size, and operational capacities. This, in turn, would largely determine air space allocation and utilization. Finally, these factors would become the basis for planning the evolution of the ATC system itself.

Absence of a national plan which is readily available has hampered the evolution of a rational and comprehensive airports and airways development strategy. The Federal Aviation Administration has the greatest current knowledge, but does not have a comprehensive charter to involve local initiatives with respect to airport development. The Authority could be chartered to perform in a manner similar to the United Stated Railway Association (USRA) — that is, to be mandated by Congress to put together a "systems plan," circulate it widely and submit it to Congress for review and approval.

RECOMMENDATION: The Authority should be responsible for the preparation of the "National Airports and Airways Systems Plan"; this plan should be developed after extensive consultation with affected interests.

2. Financing for the Authority: The Air Traffic Control System

Initially, the Authority would assume responsibility for the operation of the ATC system and the implementation of the NAS plan as approved by the Congress. The Authority would also assume the assets of the system and the capitalized unobligated balance in the Airports and Airways Trust Fund. In order to justify Congressional approval, the National Academy Panel believes that the Authority must meet the broad criteria stated earlier: namely, that it be predominantly of a commercial character, self-sustaining, and involve business-like transactions with the public.

The Panel discussed three general funding approaches for the Authority:

(1) The continuation of the taxes now collected and the use of the trust fund. It would be unprecedented to commit a tax generated, dedicated trust fund revenue stream into the hands of a government corporation, and it would violate the principle that government corporations operate through payments from users. Also, since no funds could be made available from the trust fund unless by appropriation by Congress, the continuation of the trust fund would, of necessity, mean the continuation of the current processes of congressional and Executive Branch oversight and funding control.

(2) Use of a "continuing appropriation". In the case of the Social Security Trust Fund, Congress has been willing to enact a continuing appropriation (i.e. one that is perpetual and does not require annual review and enactment). But, as a condition of enacting this form of appropriation, Congress has also spelled out the policies, practices, standards, and payment amounts in

detail to assure that these funds are expended in accordance with the public will. The Panel feels that the management of ATC and airport development requires considerable latitude, and therefore, a continuing appropriation could prove to be neither appropriate nor politically feasible. There is also the concern that such continuing appropriations are too open-ended and thus lack constraint on spending.

(3) Changing the revenue source. The method of financing is the key factor limiting the choice of organizational options. It is doubtful that the Congress would be willing to provide essential flexibility unless the program were financed from user charges rather than by a dedicated tax and appropriations. Specifically, the Authority could be authorized to establish its own schedule of fees or charges in accordance with formulas established by law including the applicability of the Administrative Procedures Act. Under this approach, the taxes now charged to finance the ATC system would be withdrawn, and the trust fund terminated. Thus, the revenue stream to support the ATC system would be corporate revenues, not tax revenues and, therefore, the system would not be subject to appropriations and the oversight which necessarily accompanies the exercise of appropriation authority. Those who pay the fees would be in a better position to demand services.

The last of these approaches has several major advantages. First, it would be consistent with Administration policy and a growing interest in identifying legitimate opportunities to shift the cost of government services that can be attributed to specific user groups.

Second, it would obviate the need for a major federal tax.

Third, it would relieve the federal budget of a large item of appropriation (approximately $4.8 Billion in FY 1987) at a time when this is a critically important element in overall federal government resource allocation strategy.

Finally, it would reduce the degree of oversight time that the Congress and the Executive Branch spend on ATC system matters. It should be pointed out that neither the President nor the Congress would relinquish their general policy oversight authority, and as a government corporation reporting to the Secretary of Transportation, the Authority would remain fully accountable in a political and policy sense.

RECOMMENDATION: The National Academy Panel recommends that the best course of action in considering the financing of the proposed Authority would be to authorize it to establish a corporate system of user charges, in substitution for the present tax and Trust Fund mechanism.

Based on these recommendations, the Panel believes that the following financing approaches would be appropriate:

- The enabling statute should make it clear that, in the operation of the ATC, the Authority would be required to be self-sustaining; that is, it would be authorized and required to establish a system of charges such that the full total cost of the administration of the system would be covered, and that it would not be the intent that appropriations be sought for any of these costs. But there are two potential exceptions to this general principle. The GCCA and most enabling statutes for existing government corporations do provide for appropriations needed to protect against deficits that threaten the capacity of the corporation to function. Also, if it were the intent of the Congress to retain control of, and, therefore, fund, some part of the cost of the ATC system (i.e. special subsidies, or the cost of public regulation) it could fund such activities by appropriated funds conveyed to the corporation.
- Congress should spell out, in authorizing legislation, the policies, standards, and guidelines that would govern the rate system to be established by the Authority. In addition, the Panel recommends that the Secretary of Transportation be given approval authority over the specific rate schedules prepared and recommended by the Authority.

- The Congress should place the corporation under the GCCA, and insist on the procedure whereby the business-type budget of the corporation is reported in the President's budget for approval of the corporate program only. In keeping with the intent of the GCCA, the budget should not be subject to line item review.

3. Financing the Authority: Airport Development

Almost universally, it was stated that the real "pacing item" in the future development of the total airports/airways system was the airports, not the ATC system. Thus, the Panel felt strongly that no concept of the corporation would be satisfactory unless it attempted to identify better solutions to the problems of airport development.

Proposals for the creation of the national plan recognize that there is a need to develop airports and airways together in a comprehensive manner, and that the future of the ATC system itself cannot really be planned until the development of airports and their use by both major carriers and general aviation is fully understood.

Airport development is not within the sole authority nor control of the federal government. The major investment is by local government and there is also substantial investment by the carriers. The federal investment is marginal, and is made available only through a formula grant program in decreasing amounts. A strong case can be made that the Authority can and should be able to make a greater contribution to airport development because it can be vested with innovative kinds of financing authorities beyond the capacity of a regular government agency. To meet this need, the Federal Aviation Authority could be given authority by Congress to:

- Substitute user charges for tax revenues now flowing through the trust fund.
- Continue the present Airways Development Grant Program using appropriated funds. This could be done either by Congress authorizing the continuation of the present formula allocations, or by giving the Authority a block of discretionary contract authority to place such grant funds where they would be most needed to implement the purpose of the proposed Airports and Airways System Development Plan.
- Make loans for airport development to public bodies, either governments or official airport authorities. This authority should be with respect to the use of either federal funds or funds from private sources. Thus, the Congress could authorize federal loan funds, borrowed from the Treasury for corporate programs, with appropriate policy guidance. Such authority should be under a five year authorization and appropriation with commercial audit, and residual GAO audit authority.
- Make loan guarantees. Congress could define policies and establish limits on the total amount.
- Assist municipalities and airport authorities in the sale of their own securities.

D. Summary

In summary, the National Academy Panel concludes that a government corporation has the potential to provide for the superior operation of the ATC system serving a traveling and shipping public who would both pay for the service and receive the benefits of greater operational effectiveness, safety, and reliability. In addition, the Authority would offer a more flexible and business-like way to expand and enhance the ability of the federal government to participate in the planning and financing of the national network of airports, in partnership with state and local governments, without posing a new threat to the federal government's budget and deficit reduction problems. These advantages can be achieved within the framework of political and policy direction and control in the Congress and the Executive Branch.

These issues are complex, and may lead to concerns over the substantial changes emerging from the creation of the Authority. But the Panel concludes that the need for change is great and the opportunities for improvements far outweigh the risk.

APPENDIX A

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

PANEL BIOGRAPHIES

Mr. Robert C. Moot, Panel Chairman
Consultant; former Controller of the Department of Defense; Comptroller, AMTRAK; chairman of the 1981 National Academy study of government corporations.

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Distinguished Visiting Professor of Public Administration, George Washington University; former Deputy Administrator, Urban Mass Transportation Admin., DOT; Special Assistant to DOT Deputy Secretary; Deputy; Assoc. Director, OMB.

Mr. Alan L. Dean
Consultant, former Assoc. Administrator, Federal Aviation Administration; Asst. Secretary, Department of Transportation, Vice President, United States Rail Assn.; Chairman, Board of Directors, National Academy of Public Administration.

Mr. Paul Dembling
Attorney; former General Counsel and Associate Administrator, Congressional Relations, NASA; former General Counsel, General Accounting Office.

Mr. Ronald C. Moe
Specialist in Government and Administration, Congressional Research Service, and an expert on government corporations.

Mr. Harold Seidman
Scholar in Residence, the Brookings Institution, former Assistant Director, U.S. Office of Management and Budget; Professor of Public Administration, University of Connecticut.

APPENDIX B

REFERENCES

1. *Annual Report of the Effect of Airline Deregulation Act on the Level of Air Safety*, Report of the Secretary of Transportation to the United States Congress pursuant to Section 107 of the Airline Deregulation Act of 1978, Washington, D.C., May, 1982.

2. *FAA Response to New Engineering and Development Initiatives*, FAA Consultative Planning Conference, Washington, D.C., January 1980.

3. Johnson, R. G., *Entry Conditions in the Domestic Airline Industry under Deregulation*, Washington, D.C.: Dissertation, The George Washington, University, 1982.

4. Kahn, Alfred E., *The Economics, of Regulation: Principles and Institutions*, New York: Wiley and Sons, 1970.

5. *Federal Aviation Administration Activities in the Agency's 50th Year*, Washington, D.C.: FAA, 1980.

6. *A Proposal for the Future of the Flight Service Stations*, Washington, D.C.: U.S. Department of Transportation, August, 1973.

7. *Future Air Traffic Control System Description: ATC Facilities and Interfaces*, Washington, D.C.: Systems R & D. Service, 1981.

8. *FAA Plans, Programs for the Future: Airports and the Air Traffic Control System*, Washington, D.C.: Seminar of the Office of Technology Assessment, FAC, 1980.

9. *Summary of Federal Aviation Administration Responses to National Transportation Safety Board Recommendations*, Washington, D.C.: FAA, 1983.

10. *A Review of the Airport Development Assistance Plan and Assessment of Future Needs*, Washington, D.C.: FAA, 1980.

11. *Aviation Cost Allocation Study: Allocations of Airport and Airway System Costs*, Washington, D.C.: U.S. Department of Transportation, 1972.

12. Gilbert, Glen A., *Air Traffic Control: The Uncrowded Sky*, Washington, D.C.: Smithsonian Institution Press, 1973.

13. *FAA Forecast Conference Proceedings*, Washington, D.C.: FAA, 1980.

14. *Report on Government Corporations, Volume I*, Washington, D.C., National Academy of Public Administration, 1981.

15. Herlihy, E., Miller, J., Visco, E., *Adequacy of Airport Inventory for Future Requirement*, Washington, D.C.: Report by the National Institute for Community Development, Inc. for the FAA, 1979.

16. Wilkins, William, *Growth Forecast for the 1980's*, Washington, D.C.: Remarks prepared for the ATC Computer Replacement Conference, 1980.

17. Poritzky, Siegbert B., *Scenario for the Future System*, Washington, D.C.: Remarks prepared for the ATC Computer Replacement Conference, 1980.

APPENDIX C

Government Corporation Control Act [1]

PUBLIC LAW 248—79TH CONGRESS
CHAPTER 557—1ST SESSION

AN ACT

To provide for financial control of Government corporations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government Corporation Control Act."

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the Congress to bring Government corporations and their transactions and operations under annual scrutiny by the Congress and provide current financial control thereof.

TITLE I—Wholly Owned Government Corporations

SEC. 101. As used in this Act the term "wholly owned Government corporation" means the Commodity Credit Corporation; Federal Intermediate Credit Banks; Production Credit Corporations; Regional Agricultural Credit Corporations; Farmers Home Corporation; Federal Crop Insurance Corporation; Federal Farm Mortgage Corporation; Federal Surplus Commodities Corporation; Reconstruction Finance Corporation; Defense Plant Corporation; Defense Supplies Corporation; Metals Reserve Company; Rubber Reserve Company; War Damage Corporation; Federal National Mortgage Association; the RFC Mortgage Company; Disaster Loan Corporation; Inland Waterways Corporation; Warrior River Terminal Company; The Virgin Islands Company; Federal Prison Industries, Incorporated; United States Spruce Production Corporation; Institute of Inter-American Affairs; Institute of Inter-American Transportation; Inter-American Educational Foundation, Incorporated; Inter-American Navigation Corporation; Prencinradio, Incorporated; Cargoes, Incorporated; Export-Import Bank of Washington; Petroleum Reserves Corporation; Rubber Development Corporation; U. S. Commercial Company; Smaller War Plants Corporation; Federal Public Housing Authority (or United States Housing Authority) and including public housing projects financed from appropriated funds and operations thereof; Defense Homes Corporation; Federal Savings and Loan Insurance Corporation; Home Owners' Loan Corporation; United States Housing Corporation; Panama Railroad Company; Tennessee Valley Authority; Federal Housing Administration; and Tennessee Valley Associated Cooperatives, Incorporated.

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[1] 59 Stat. 597.

Sec. 102. Each wholly owned Government corporation shall cause to be prepared annually a business-type budget which shall be submitted to the Bureau of the Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classification of data,[1] and the manner in which such budget program shall be prepared and presented. The budget program shall be a business-type budget, or plan of operations, with due allowance given to the need for flexibility, including provisions for emergencies and contingencies, in order that the corporation may properly carry out its activities as authorized by law. The budget program shall contain estimates of the financial condition and operations of the corporation for the current and ensuing fiscal years and the actual condition and results of operation for the last completed fiscal year.

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[1] As amended by sec. 105 of the Budgeting and Accounting Procedures Act of 1950.

Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the corporation. Such statement shall include estimates of operations by major types of activities, together with estimates of administrative expenses, estimates of borrowings, and estimates of the amount of Government capital funds which shall be returned to the Treasury during the fiscal year or the appropriations required to provide for the restoration of capital impairments.

Sec. 103. The budget programs of the corporations as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual Budget required by the Budget and Accounting Act, 1921. Amendments to the annual budget programs may be submitted from time to time.

Budget programs shall be submitted for all wholly owned Government corporations covering operations for the fiscal year commencing July 1, 1946, and each fiscal year thereafter.

Sec. 104. The budget programs transmitted by the President to the Congress shall be considered and legislation shall be enacted making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends. The provisions of this section shall not be construed as preventing Government corporations from carrying out and financing their activities as authorized by existing law, nor as affecting the provisions of section 26 of the Tennessee Valley Authority Act, as amended. The provisions of this section shall not be construed as affecting the existing authority of any Government corporation to make contracts or other commitments without reference to fiscal year limitations.[1]

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[1] As amended by P.L. 268, 80th Cong.

SEC. 105. The financial transactions of wholly owned Government corporations shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States: *Provided*, That such rules and regulations may provide for the retention at the offices of such corporations, in whole or in part, of any accounts of accountable officers, covering corporate financial transactions, which are required by existing law to be settled and adjusted in the General Accounting Office, and for the settlement and adjustment of such accounts in whole or in part upon the basis of examinations in the course of the audit herein provided, but nothing in this proviso shall be construed as affecting the powers reserved to the Tennessee Valley Authority in section 831h (b) of Title 16. The audit shall be conducted at the place or places where the accounts of the respective corporations are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The audit shall begin with the first fiscal year commencing after the enactment of this Act.

SEC. 106. A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15 following the close of the fiscal year for which such audit is made. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of the several corporations, together with such recommendations with respect thereto as the Comptroller General may deem advisable, including a report of any impairment of capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the corporation concerned at the time submitted to the Congress.

SEC. 107. Whenever it is deemed by the Director of the Bureau of the Budget, with the approval of the President, to be practicable and in the public interest that any wholly owned Government corporation be treated with respect to its appropriations, expenditures, receipts, accounting, and other fiscal matters as if it were a Government agency other than a corporation, the Director shall include in connection with the budget program of such corporation in the Budget a recommendation to that effect. If the Congress approves such recommendation in connection with the budget program for any fiscal year, such corporation, with respect to subsequent fiscal years, shall be regarded as an establishment other than a corporation for the purposes of the Budget and Accounting Act, 1921, and other provisions of law relating to appropriations, expenditures, receipts, accounts, and other fiscal matters, and shall not be subject to the provisions of this Act other than this section. The corporate entity shall not be affected by this section.

TITLE II—Mixed-Ownership Government Corporations

SEC. 201. As used in this Act the term "mixed-ownership Government corporations" means (1) the Central Bank for Cooperatives and the Regional Banks for Cooperatives, (2) Federal Land Banks, (3) Federal Home Loan Banks, and (4) Federal Deposit Insurance Corporation.

SEC. 202. The financial transactions of mixed-ownership Government corporations for any period during which Government capital has been invested therein shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the respective corporations are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The audit shall begin with the first fiscal year commencing after the enactment of this Act.

Sec. 203. A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15, following the close of the fiscal year for which such audit is made. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of, and the use of Government capital by, each such corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the

Treasury, and to the corporation concerned at the time submitted to the Congress.

Sec. 204. The President shall include in the annual Budget any recommendations he may wish to make as to the return of Government capital to the Treasury by any mixed-ownership corporation.

TITLE III—General Provisions

Sec. 301. (a) The expenses of auditing the financial transactions of wholly owned and mixed-ownership Government corporations as provided in sections 105 and 202 of this Act shall be borne out of appropriations to the General Accounting Office, and appropriations in such sums as may be necessary are hereby authorized: *Provided,* That each such corporation shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General, and the General Accounting Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts: *Provided further,* That in making the audits provided in said sections the Comptroller General shall, to the fullest extent deemed by him to be practicable, utilize reports of examinations of Government corporations made by a supervising administrative agency pursuant to law.

(b) For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ not more than ten persons without regard to the Classification Act of 1923, as amended, only one of whom may be compensated at a rate of as much as but not more than $10,000 per annum, and to employ by contract, without regard to section 3709 of the Revised Statutes, professional services of firms and organizations for temporary periods or for special purposes.

(c) The audit provided in sections 105 and 202 of this Act shall be in lieu of any audit of the financial transactions of any Government corporation required to be made by the General Accounting Office for the purpose of a report to the Congress or to the President under any existing law.

(d) Unless otherwise expressly provided by law, no funds of any Government corporation shall be used to pay the cost of any private audit of the financial records of the offices of such corporation, except the cost of such audits contracted for and undertaken prior to April 25, 1945.

SEC. 302. The banking or checking accounts of all wholly owned and mixed-ownership Government corporations shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a bank designated as a depositary or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this section under such conditions as he may determine: *And provided further*, That this section will not apply to the establishment and maintenance in any bank for a temporary period of banking and checking accounts not in excess of $50,000 in any one bank. The provisions of this section shall not be applicable to Federal Intermediate Credit Banks, Production Credit Corporations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks, except that each such corporation shall be required to report annually to the Secretary of the Treasury the names of the depositaries in which such corporation keeps a banking or checking account, and the Secretary of the Treasury may make a report in writing to the corporation, to the President, and to the Congress which he deems advisable upon receipt of any such annual report.

SEC. 303. (a) All bonds, notes, debentures, and other similar obligations which are hereafter issued by any wholly owned or mixed-ownership Government corporation and offered to the public shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject to such terms and conditions, shall be issued in such manner and at such times and sold at such prices as have been or as may be approved by the Secretary of the Treasury.

(b) Hereafter, no wholly owned or mixed-ownership Government corporation shall sell or purchase any direct obligation of the United States or obligation guaranteed as to principal or interest, or both, for its own account and in its own right and interest, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury: *Provided*, That the Secretary of the Treasury may waive the requirement of his approval with respect to any transaction or classes of transactions subject to the provisions of this subsection for such period of time and under such conditions as he may determine.

(c) The Secretary of the Treasury is hereby authorized to exercise any of the functions vested in him by this section through any officer, or employee of any Federal agency whom he may designate, with the concurrence of the head of the agency concerned, for such purpose.

(d) Any mixed-ownership Government corporation from which Government capital has been entirely withdrawn shall not be subject to the provisions of section 302 or of this section during the period such corporation remains without Government capital. The provisions of subsections (a) and (b) of this section shall not be applicable to Federal Intermediate Credit Banks, Production Credit Corporations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks, except that each such corporation shall be required to consult with the Secretary of the Treasury prior to taking any action of the kind covered by the provisions of subsections (a) and (b) of this section, and in the event an agreement is not reached, the Secretary of the Treasury may make a report in writing to the corporation, to the President, and to the Congress stating the grounds for his disagreement.

SEC. 304. (a) No corporation shall be created, organized, or acquired hereafter by any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States, except by Act of Congress or pursuant to an Act of Congress specifically authorizing such action.

(b) No wholly owned Government corporation created by or under the laws of any State, Territory, or possession of the United States or any political subdivision thereof, or under the laws of the District of Columbia, shall continue after June 30, 1948, as an agency or instrumentality of the United States, and no funds of, or obtained from, the United States or any agency thereof, including corporations, shall be invested in or employed by any such corporation after that date, except for purposes of liquidation. The proper corporate authority of every such corporation shall take the necessary steps to institute dissolution or liquidation proceedings on or before that date: *Provided*, That prior thereto any such corporation may be reincorporated by Act of Congress for such purposes and term of existence and with such powers, privileges, and duties as authorized by such Act, including the power to take over the assets and assume the liabilities of its respective predecessor corporation.

Approved December 6, 1945.

EXPLANATORY ILLUSTRATION OF BUDGETS FOR BUSINESS ENTERPRISE AND REVOLVING FUNDS

Statement A

Sources and Application of Funds

[For fiscal years ending June 30, 1951, 1952, and 1953]

This is a balanced presentation of the amounts becoming available during the year, either in the form of cash or other working capital, and the way in which these amounts have been used. The statement excludes depreciation, losses on loans, and other transactions which affect neither cash nor other current assets and liabilities. It does reflect transactions which affect cash, accounts receivable, accounts payable, other accrued liabilities, inventories of supplies for administrative purposes, deferred charges and credits.

Both the "funds applied" and the "funds provided" parts of the statement are divided between "operations" and Treasury "financing." The sum of the amounts applied to operations less the amounts provided by operations equals the net expenditures, which are included within the budget expenditures for the Government as a whole.

	1951 actual	1952 estimate	1953 estimate
FUNDS APPLIED			
To operations:			
Acquisition of assets: Equipment	$ 18,238	$ 18,000	$ 18,000
Expenses:			
Purchase of materials[1]	646,616	630,000	630,000
Other expenses	877,386	966,500	966,500
Total expense	$1,524,002	$1,596,500	$1,596,500
Subtotal[2]	1,542,240	1,614,500	1,614,500
Increase in selected working capital items[3]	192,864	14,367	6,266
Total funds applied to operations	1,735,104	1,628,867	1,620,766
To financing: Increase in Treasury cash	335,633	633	------------
Total funds applied	$2,070,737	$1,629,500	$1,620,766
FUNDS PROVIDED			
By operations:			
Realization of assets: Equipment	$ 2,496	$ 3,500	$ 2,500
Income:			
Sales of goods and services	1,566,956	1,624,500	1,615,500
Rental income from quarters	1,285	1,500	1,500
Total income	$1,568,241	$1,626,000	$1,617,000
Total funds provided by operations	1,570,737	1,629,500	1,619,500
By financing:			
Appropriation	500,000	------------	------------
Decrease in Treasury cash	------------	------------	1,266
Total funds provided	$2,070,737	$1,629,500	$1,620,766
EFFECT ON BUDGETARY EXPENDITURES			
Funds applied to operations	$1,735,104	$1,628,867	$1,620,766
Funds provided by operations	1,570,737	1,629,500	1,619,500
Net effect on budgetary expenditures[4]	$ 164,367	$ -633	$ 1,266
The above amounts are charged (or credited[-]) as follows:			
To budgetary authorizations[4]	500,000	------------	------------
To net receipts of the enterprise[4]	-335,633	-633	1,266

[1] Purchases for manufacture or sale are shown here, whether or not the materials are used within the year.

[2] The amounts applied to operations, other than changes in working capital, are usually broken down by object class in a supporting schedule. Where there are annual congressional limitations on administrative expenses, the object schedule is usually limited to the expenses which are under limitation.

[3] The change in selected working capital items will equal the difference between the figures on statement C for two successive years for current assets, other than Treasury cash and inventories for sale and manufacture, less current liabilities.

[4] Net effect on budgetary expenditures includes the spending of appropriations for the revolving fund as well as the spending of the fund's own receipts. A negative figure here indicates collections in excess of expenditures.

Mr. MINETA. There being no further business of the subcommittee, we stand in recess until June 22.

[Whereupon, at 5:35 p.m., the subcommittee recessed to reconvene on Wednesday, June 22, 1988.]

PROPOSALS TO IMPROVE THE EFFECTIVENESS OF THE FEDERAL AVIATION ADMINISTRATION

WEDNESDAY, JUNE 22, 1988

House of Representatives,
Subcommittee on Aviation,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2167, Rayburn House Office Building, Hon. Norman Y. Mineta (chairman of the subcommittee) presiding.

Mr. Mineta. The Aviation Subcommittee will please come to order.

Today we continue the hearings that we initiated earlier this month on various proposals that have been submitted to attempt to improve the administration of the Federal Aviation Administration. Since we have a full slate of people testifying today, I would like to admonish all of our witnesses to keep their presentations as brief as possible. All of the full statements are being made a part of the record, so I would appreciate the witnesses summarizing their statements this morning.

We are starting off with a very distinguished panel of Members of the House, including a couple of Members of our own Committee, the Honorable James Oberstar from Minnesota; Mr. Molinari from New York; Mr. Rinaldo from New Jersey; Mr. Lewis from Florida, and Mr. Barton from Texas. This very distinguished group is before us right now, so I would like to go ahead and ask Mr. Oberstar to start off this morning's panel.

TESTIMONY OF HON. JAMES L. OBERSTAR, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA; HON. GUY V. MOLINARI, A REPRESENTATIVE IN CONGRESS FROM NEW YORK; HON. MATTHEW J. RINALDO, A REPRESENTATIVE IN CONGRESS FROM NEW JERSEY; HON. TOM LEWIS, A REPRESENTATIVE IN CONGRESS FROM FLORIDA; HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Mr. Oberstar. Thank you, Mr. Chairman. I want to compliment you and the ranking Republican member of the subcommittee, Mr. Gingrich, for entering into this very long inquiry on a broad basis of the mission and the role of the FAA, how it is structured, and how it can best accomplish its unique responsibilities to aviation.

I know that the results of this hearing will produce changes and improvements in the way the FAA conducts its responsibilities.

The Nation's airspace is uniquely a Federal Government domain. It belongs to all Americans and should be managed in the broadest public interest and the broadest public good.

Twenty-two years ago, when the Congress created the U.S. Department of Transportation, it was so concerned with safety that the Congress specifically wrote into the first paragraph of that legislation, transferring FAA into the new Department of Transportation, a very serious and solemn admonition that "There are hereby transferred to the Federal Aviation Administrator, and it shall be his duty to exercise, the functions, powers, and duties of the Secretary pertaining to aviation safety." It didn't lodge safety in the Secretary of Transportation. It made a specific reference to safety lodged in the Administrator of the Federal Aviation Administration. In fact, Congress was so overwhelmingly concerned about safety that there are no less than six references to safety in that legislation creating the Department of Transportation and in the accompanying committee report.

In addition to that there was a separate reference to the need to have a separate, independent safety function. There was created in the Department of Transportation a separate Office of Accident Investigation, separate from the FAA, to which the former CAB investigative staff would be transferred, separate from the National Transportation Safety Board.

I mention these things because I think it is instructive for the current inquiry and the purpose for which I am here this morning, and that is that this separation of responsibilities and duties didn't last very long. Actually, the Office of Accident Investigation was never even operative. It was soon absorbed into the National Transportation Safety Board.

It is even more interesting that it didn't take very long for the Congress to realize that the NTSB could not function independently, as it was intended to do, within the Department of Transportation; soon it, too, was reorganized out of the Department of Transportation into a separate independent agency. The same must be done today for the Federal Aviation Administration. We are at a point where the FAA must be given a special independent status in order to carry out its responsibilities of setting standards for equipment, crew performance, and for separating aircraft.

To get there, or at least focus Congressional thought on the process that I've described and the goal of a truly independent and effectively-functioning FAA, I introduced legislation to restore independent status to the FAA. Under my bill, I would envision three regions, Eastern, Central, and Western. The three regions would eliminate what are now possibly inefficient duplications of effort throughout the existing nine regions.

Secondly, those FAA regions often—as we have found in the work of the Subcommittee on Investigations and Oversight—operate as autonomous fiefdoms. In early 1983, the Boeing Aircraft Company applied to FAA's Northwest Mountain Region to certify a new configuration for the 747. The region reviewed the application for several months, and notified Boeing that the new configuration met all existing standards. Toward the end of 1984 Boeing began manufacturing new, modified 747's with over-wing exits removed, and delivered the first aircraft to an overseas purchaser.

FAA headquarters in Washington didn't find out about the modification until the Association of Flight Attendants notified them a year after the region approved the action and two years after the application for modification was submitted by Boeing.

That's outrageous, that the region would operate autonomously. It's inconceivable that so massive a decision should have been undertaken without the knowledge and awareness and approval of the central office in a decision so vital to the safety of the flying public.

Even more incredible, the hearing that our subcommittee conducted indicated that this was not the first time that aircraft had been modified without the knowledge of FAA headquarters.

Having the FAA operate in this manner, with divided responsibility and within the Department of Transportation, with divided loyalties, functions, and involvement from time to time of the Secretary of Transportation, regardless of party, is—we have found in the work of our subcommittee—inhibiting the effectiveness of the FAA.

Another example. In 1984, at the urging of this Aviation Subcommittee, the FAA developed a proposed rule on protective breathing equipment that would meet standards required for the approval of new equipment, and wanted this required for flight crews. Without going through all the details, by the time it got through review within FAA and review at DOT and review at OMB, it was a year before that simple rulemaking, directed by this subcommittee, was actually put into place.

A third example was uncovered just last year in the hearings of our Subcommittee on Investigations and Oversight. The Southern Region of FAA, the Miami Flight Standards District Office, issued a finding and rulemaking by the General Counsel in that Regional Office on minimum equipment lists. The ruling concerned how long equipment could be permitted to fly without certain repairs being made. That ruling would have applied only to the Southern Region. Someone finally realized that this would be of national significance and ought to be reviewed by Washington. Ultimately, it was. Ultimately, our hearings brought out the fact that this proposal had been kicking around in the Regional Office for months, literally, delayed by bureaucracy and simple discussion back and forth and inability to reach a final decision. It was through our hearings on minimum equipment lists that a decision was finally made at the top, and now we have a decisive national policy.

In this case, the one region was right. But why should that be a regional responsibility? Why shouldn't that be a national responsibility? Why shouldn't the headquarters have control over this?

That's what my legislation would do. It would focus the responsibility for administrative control at the top so that decisions can be made and applied on a national basis.

The other major points of my bill would be to establish a five-year fixed term for the Administrator of the Federal Aviation Administration to assure continuity, consistency in decisionmaking, and to give that Administrator flexibility and freedom from interference by the political process but still subject to oversight by the NTSB, by GAO, and by the Congress.

The second major area is that of rates of pay, a major problem in the FAA together with the inability to move people around throughout the system, to move the best personnel to the places where they are most needed. For example, who would want to leave Farmington, Minnesota and go to Boston Center for the same pay at a higher cost of living, with a lower quality of life; frankly, with no disparagement meant to Boston, but it's a whole lot nicer living out in Farmington.

I also provide authority and direction to the FAA in the legislation to develop a report on improvement and simplification of the FAA procurement process.

So a fixed term for the Administrator, centralized authority, minimize the role of the regions, flexibility of personnel, and an improved procurement process are the elements of this legislation. I do not attempt to address the matter of the Aviation Trust Fund; I don't think that the political will is present in the Congress to do what is right, to remove the trust fund from the budget, but ultimately that has to be done if we're going to improve airports and build the facilities and install the equipment that we need to make the system totally safe.

Thank you very much, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Oberstar. I want to thank you for your leadership in chairing the Subcommittee on Investigations and Oversight and ferreting out a lot of this bureaucratic "doldrumming" on these issues.

I would like to introduce next our very fine member from our own committee, Mr. Molinari, who is actively involved in many of these things.

Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman. I also welcome the opportunity to testify regarding FAA's overall effectiveness and my legislation, H.R. 3567, which would set the FAA Administrator's term of service at seven years.

After participating in the subcommittee's last hearing on the effectiveness of the FAA and having reviewed the transcript of that hearing, it is obvious to me that the problems that the witnesses raised are really based on the FAA's current mindset and how it approaches problems and reacts to them. No overall structural change will, in and of itself, solve these problems. Problems regarding insufficient numbers of personnel, personnel restrictions, and procurement are in the end related to this basic mindset. In fact, for most of the problems raised in the subcommittee's prior hearing, I believe there are solutions which can be developed and implemented within the FAA's current structure.

As one example, we learned at the last hearing that the FAA has the ability to provide wage incentives through demonstration projects, special pay rates, and direct hire authority; yet, they have failed to implement these programs aggressively to replenish the depleted airway technician workforce or the inspector workforce.

The FAA is a reactive agency. They respond to tragedy, to accidents. Only after the Delta crash at Dallas-Fort Worth in August, 1985 did the FAA demand that pilots be trained for poor weather conditions such as microbursts. Only after the crash at Cerritos, California did the FAA work on Mod-C transponder regulations, enhanced TCAS systems, and increased TCAs.

The fact is, the FAA has consistently failed to acknowledge that there are problems until they reach critical proportions. Let me cite a few examples.

As we all know, in 1981 over 11,000 air traffic controllers were fired for illegally striking. FAA claimed that they could rebuild the workforce within 18 months because the pre-strike workforce level was too large. It could do more with less. For a number of years we tolerated having a smaller workforce, believing the FAA that everything was alright and that they were rebuilding the system.

Traffic, meanwhile, kept growing at record levels. Five years after the strike—and still years away from a replenished workforce—the American public started to worry about air safety. The FAA answer remained, "Everything is fine; we have the safest system in the world." Still no plan was developed to solve this crisis. Today, seven years after the strike and five and a half years after the FAA's predicted recovery date, there are still 4,000 fewer experienced controllers than before the strike.

FAA failed to alter its controller training process throughout these past seven years, even though 50 percent of the trainees were failing to become controllers. Furthermore, the FAA in the last seven years never once asked or proposed legislation for geographic differentials or incentives so that experienced controllers would remain in the system. Moreover, they have stubbornly opposed efforts to selectively rehire 1,000 of the best former controllers.

Even at times when the FAA attempts to plan for the future, its mindset gets in the way. The National Airway Systems Plan, for example, is an attempt to meet the needs of the airway system for the 21st century. The plan, not thoroughly thought out, soon developed delays; the FAA, however, did not alter its plans, and we are now seeing the consequences.

It had determined early on that the modernization program would eliminate the need for one-third of airway technician jobs. Despite the delays in implementation of the advanced automated technology, the FAA kept depleting the maintenance workforce. They failed to adapt to reality. Their minds were set, and they would not change to new circumstances. Now the FAA is met with a crisis, and yet their response is minimal. They could, as we said earlier, adopt incentive programs, demonstration projects, special pay rates, etc., but they have failed to do so, and I will soon be introducing legislation to replenish the technician workforce by setting staffing goals and providing incentives for experienced maintenance workers.

Now, organizational structure changes will not alter this type of mindset. Making the FAA an independent agency or an authority or overhauling the FAA in any other major way will do little to improve this thought process. Having the same people under a different roof is not a solution.

In the last few months the FAA, in what appears to be a response to all the talk about reorganization, has made some structural changes itself. Recently, the regional directors lost some of their authority to FAA headquarters. Last week, four new Executive Directors—a hierarchy above the Associate Administrators—

were appointed. I see no evidence that these changes will provide the quick relief needed in solving the most pressing issues of aviation safety today.

What the FAA needs is a strategy, a plan, a blueprint for the future. They need a strong leader who will develop and implement that strategy. That is why I have introduced legislation that would set the Administrator's term at seven years. In that period of time, he or she would be able to develop the strategy for the future and see that that vision is carried out. In that time he or she will be able to shape the agency. It takes time—as much as two years—to learn the complexities of this technical agency; it can take that long to earn the trust of mid-level management. Bureaucrats, knowing that their boss will be around for more than just a few years, will be willing to follow the plan. They will no longer think, "He will be gone in a few months; I don't have to do that."

The FAA needs a leader who is willing to adapt to change, who realizes that the FAA does make mistakes, and knows that the rhetoric put out by the public affairs department is not a solution to real crises. They need an Administrator that will take hold of, direct, and control the organization. One way we can insulate the Administrator from the pressures that will be brought upon him from within or without the FAA is through a set term.

The seven-year term gives the Administrator the ability to set long-range planning, a strategy for the future, direct the control of the agency, and hold subordinates accountable. It offers the agency the stable, consistent, strong, independent leadership it so desperately needs. Most importantly, it enables the agency to break away from its current inertial mindset.

Mr. Chairman, I once again thank you for this opportunity and would be glad to answer any questions that you may have.

Mr. MINETA. Thank you very much, Mr. Molinari. Again, you have been one of those who have been attentive to aviation issues, and I, for one, appreciate your interest in and work on aviation safety.

At this time our very fine colleague from New Jersey, Mr. Rinaldo, will make his presentation.

Mr. RINALDO. Thank you very much, Mr. Chairman.

Before I begin my formal remarks I'd like to commend you and the ranking Republican member, Congressman Gingrich, for your strong leadership in holding these very important hearings on improving the effectiveness of the Federal Aviation Administration.

The question of how to deal more effectively with the enormous growth in commercial aviation in the decade since deregulation remains one of our thorniest public policy questions. I know that under your leadership, Mr. Chairman, this committee will do its utmost to ensure the continued safety and efficiency of the Nation's air transportation system.

I am here this morning specifically to endorse the concept of an independent FAA. I don't care which bill it is, but I think it's important that the committee move forward with a piece of legislation. In April of this year I introduced H.R. 4346, which is essentially the same as the original version of S. 1600, Senator Ford's bill to remove the FAA from the Department of Transportation. I know that S. 1600 has undergone substantial revision during consideration by the Senate Commerce Committee, but its basic goal of an independent FAA remains the same. I strongly support that goal.

In my view, Mr. Chairman, the current system for regulating American aviation has become too cumbersome to meet the increasingly challenging demands of a deregulated air transportation environment. The FAA has toiled far too long under the excess weight of a dual mandate.

As presently structured within the Department of Transportation, the FAA is in the ambiguous position of promoting the airline industry while also regulating and enforcing aviation procedures and safety standards. Because these are often conflicting goals, I think we need to streamline the FAA's operations so that it can once again perform its paramount regulatory role effectively.

The massive growth in commercial air traffic has enhanced the FAA's importance to the point where it can no longer be treated as simply another agency in the Department of Transportation's bureaucracy. With the FAA's identity as an independent regulator and enforcer of safety defined more clearly, the Department of Transportation can assume the responsibility of promoting air travel.

The dynamism and sophistication of FAA's activities do not lend themselves to bureaucratic oversight by the Department of Transportation. Given the sophisticated technology involved, the rate of growth in the system, and the need for sound and timely decisionmaking, this double layer of bureaucracy mitigates against the implementation of sound aviation policies.

The battles between the FAA and the Department of Transportation have gone on too long, as is obvious from the outcry for reform heard from the flying public, the airlines, air traffic controllers, the Members of Congress who are testifying here this morning, and virtually every other group on the American aviation scene.

In the interests of keeping my remarks brief this morning, Mr. Chairman, let me cite the situation in northern New Jersey, which provides a perfect example of where the FAA's dual role and its subservience to the Department of Transportation have impeded sound policy.

The FAA's Expanded East Coast Plan has resulted in an intolerable noise level for many of the communities south and west of Newark International Airport. Phase one of the plan created three new departure routes, two new arrival routes, and six realigned routes over the State of New Jersey.

After much public protest, the General Accounting Office investigated the situation and issued a report in April of this year that was highly critical of the FAA for not conducting an environmental assessment of the Expanded East Coast Plan to determine the level of noise pollution it would engender in this area. GAO stated that "Because many important characteristics of the plan were known to the FAA before the plan was implemented, the FAA could have foreseen that the plan would have a significant effect on some parts of New Jersey and result in controversy."

To my mind, the problem is simply this: Given its responsibility to promote the aviation industry, how can we logically expect the FAA to pursue aggressively its myriad procedural and safety responsibilities? It has to be one way or the other. No organization, no matter how well run, can be expected to promote and regulate an industry at the same time.

Frankly, the FAA must be reformed to be more of a watchdog and less the airlines' best friend.

This is not a problem unique to New Jersey. To further complicate what can best be described as an already messy situation, while FAA Administrator Allan McArtor favors setting national noise control standards—and I agree with him—he has been stymied by the Department of Transportation, which opposes such standards. The Department of Transportation's reluctance to promote such standards is a slap in the face to the millions of people nationwide who suffer from an intolerable level of noise pollution. Conflicting positions such as these leave aviation policy adrift at a time when we can ill afford to waste time.

Before I close, Mr. Chairman, I would like to emphasize the magnitude of the challenges that will face this already-overburdened system in the future. The level of revenue passenger enplanements in this country stood at 305 million in 1982. That number is expected to balloon to 487 million this year, and reach an astounding 600 million by 1992. In four years the level of passengers will have doubled in a decade. Only if we act now to streamline the activities of the FAA can we face such staggering growth with confidence.

I urge the committee to lend its most careful consideration to reforming a system faced with massive challenges, a system that cries out for reform. I think that the best way to start would be to create an independent Federal Aviation Administration.

Thank you very much, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Rinaldo.

Let me now call on Tom Lewis from Florida, who gave a very fine speech at the National Aviation Club the other day.

Mr. Lewis?

Mr. LEWIS. Thank you, Mr. Chairman.

I am pleased to have the opportunity to testify before the members of the Subcommittee on Aviation on improving the effectiveness of the Federal Aviation Administration.

There are many suggestions on how to improve the effectiveness of the FAA. I don't have all the answers, but I do have an idea that I think will clarify the mission of the agency and increase the agency's effectiveness in improving air safety. That concept requires a simple action but would be a positive first step toward a long-term improvement of our air safety system. My proposal is to eliminate the responsibility of the FAA Administrator to promote air commerce.

To do that, I have introduced H.R. 4685, calling for repeal of Section 305 of the Federal Aviation Act of 1958. My concern is that this provision may lead to conflicts with the mandated duty of regulating air safety. The legislation simply makes it clear that the major duty of the FAA Administrator is regulating air safety.

This change is needed for several reasons. First, it makes the FAA's mission very clear: It is responsible for air safety.

Second, the impact of the legislation will be to change FAA's emphasis on air safety. The safety record of the aviation industry continues to improve from the standpoint of safe passenger miles traveled. Nevertheless, there are more "white knuckle flyers" today than ever before, and they are concerned over the level of air safety. Most air travelers want even safer skies, but under the existing system the FAA must on the one hand consider the impact of encouraging air commerce, while on the other hand developing ways of improving air safety, an example being the fox watching the henhouse.

My bill would clarify FAA's choice. It would allow the FAA to deal with the impact of new safety-enhancing developments on the industry and not be tied down by the unwarranted requirement of promoting air commerce.

As the ranking Republican on the Transportation, Aviation, and Materials Subcommittee of the Committee on Science, Space, and Technology, I have worked very hard on a detailed examination of the FAA's research budget. As a consequence, I have come to the conclusion that it currently is deficit in both depth and breadth of air safety research. For example, there is no generic research program directed toward making the cabin interior both fire-resistant and one that will not produce, or mostly eliminate, toxic gasses. In fact, there are essentially no appreciable long-term research programs outside of the National Airspace System Network.

You will be interested to know that one of the reasons given me for this lack of activity is a concern over the impact that the results would have on the FAA's responsibility to promote and encourage air commerce. Nevertheless, my informal surveys indicate the traveling public will be happy to pay for any increased costs through ticket prices if safe air travel is the result, if the cabin interior is made completely fire-resistant, if they're sure the top is not going to come off the aircraft, if they're sure that it will not collapse when it lands on the runway.

H.R. 4685 is not a new or novel concept. On March 24th of this year Transportation Secretary James Burnley testified before the Aviation Subcommittee of the Senate Commerce, Science and Transportation Committee. In his statement he said, "Because FAA is charged with promoting and protecting the industry's commercial interest, it is sometimes reluctant to take safety and enforcement actions that impose significant costs and burdens on that industry."

As you know, Edith Page of the Office of Technology Assessment testified before this subcommittee on June 2nd and, after noting that FAA has this dual mandate, recommended "explicit establishment of the safety function as preeminent for the FAA Administrator."

I do not think the FAA should be in the business of promoting aviation commerce. That is clearly a job for the private sector. The major job of the FAA should be safety; however, if the promotion of safety entails the recommendation of one brand name of technology over another, my legislative intent is that this is acceptable so long as the recommendation is based on safety considerations and not on the promotion of commerce-related issues.

Critics of H.R. 4685 say that the promotion of commerce provision is necessary to provide checks and balances on the FAA's regulatory process. They maintain that without the commerce provision, the FAA will regulate the industry into oblivion by requiring all reinforced steel aircraft that are capable of withstanding any collision with the ground.

The problem with this argument is that it ignores the fact that there are sufficient checks and balances within FAA procedures that, in my opinion, are sufficient to make sure that every view is heard within the agency. For example, all rules proposed by the FAA must follow the provisions of the Administrative Procedures Act, which includes having the chance to participate in rulemaking and the right to judicial review of the rule. Moreover, Title X of the Federal Aviation Act addresses the procedures by which any person may appear before the agency and be heard, as well as judicial review of FAA orders. Consequently, there are established avenues for the industry to make their views known within the agency, and deletion of the provision on promoting commerce will have no effect on these avenues.

Moreover, industry and the aviation community are in daily communication on an informal basis on a variety of issues.

In conclusion, I believe that the elimination of the provision that requires FAA to encourage air commerce will benefit the American flying public and will not have a negative impact on the industry.

I would like to point to NASA as an example of an agency that does not have a provision requiring the encouragement of commerce; nevertheless, the United States' space industry is one of the strongest in the world.

I thank you, Mr. Chairman and members of the Aviation Subcommittee, for allowing me to testify before you today, and I look forward to working with you in the future on ways of improving the effectiveness of the Federal Aviation Administration. Thank you, Mr. Chairman, for all the good work that you do in the area of aviation.

Mr. MINETA. Tom, thank you very much. You have been a very active Member on aviation issues on the Science, Space and Technology Committee, and the work that you do on the R&D issues is very much appreciated.

At this time I'd like to call on our colleague from Texas, Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman. It's a pleasure to testify before you and the other members of the Aviation Subcommittee. I'm going to submit my full statement for the record and just speak briefly from it.

We don't need to go into the problems; I think the other members of this panel and the members of the committee know what the problems are in our aviation transportation system. I do want to say that I think the FAA has made, and is continuing to make, a good faith effort to solve these problems; however, because of the Federal procurement regulations and Federal personnel regulations that the FAA has to operate under, they simply can't get the job done. They don't have the flexibility and the time sensitivity to respond to problems.

So I am taking a little different tack in my bill in order to try to do something about it. H.R. 4396 creates a private, nonprofit corporation and totally divests the FAA of any responsibility for operating the air traffic control system. It sets up six different classes of stockholders. The airlines would have 40 percent of the stock; private pilots would have 20 percent of the stock; business aircraft owners would have 10 percent of the stock; airline pilots themselves could have 7.5 percent of the stock; air traffic controllers would have 7.5 percent of the stock; the Secretary of Transportation would have 7.5 percent, and the Secretary of Defense would have 7.5 percent. If you add that up, it should be 100 percent.

Now, each stockholder group would elect a certain number of members to a board of directors. There would be a total of 15 members on the board. The airlines would elect 6 members; the private pilots would elect 3 members; the business aircraft owners would elect 2 members; the airline pilots themselves would elect 1 member; air traffic controllers would elect 1 member, and the Secretary of Transportation and the Secretary of Defense would each elect 1 member to the 15-member board.

The board would then establish the corporation, and the corporation would own all the air traffic control facilities. They would have the ability to operate these facilities, or to contract them out. The individual airports would have the ability to charge landing fees based on supply and demand at each individual airport. They would also have the authority to charge a per-passenger fee for leaving that particular airport.

The Federal Aviation Administration would be totally responsible for safety. It would retain oversight of the corporation. The Administrator of the Federal Aviation Administration would have to give an annual report on the status of the corporation.

I would like to point out that my bill has been extensively reviewed with all interested parties in the industry. We have worked on this for approximately a year. It has gone through numerous drafts. Anybody that we could think of that would have an interest and that would have any expertise was given the ability and the opportunity to comment and to provide input. As a consequence, all of the various groups that I have mentioned have done so.

I don't think that my bill is a perfect bill by any means. I think it's a starting point, a discussion point, something that the members of the committee who have much more knowledge than I do in the industry should use to review and to hold hearings on. But I do think it's a good starting point. As the other members of this panel have testified, it's obvious that there are some problems that are not being solved, that are not going to be solved under the current status quo. I urge the committee to look seriously at my bill and the other bills and then draft legislation safety number one, but also giving the opportunity for our air traffic control system to operate with true flexibility. With this legislation we can get a state-of-the-art system in, we can hire new controllers, and we can put in the efficiency that is sorely lacking.

Mr. MINETA. Thank you very much, Mr. Barton.

I would like to ask our fine colleague, Mr. Gingrich, to start off the questioning.

Mr. GINGRICH. I want to thank all five of you for coming and also the patience that you have shown in each of you sitting through the testimony of the other four.

If I could for just a minute or two, I'd like to go through the testimony of each of you because I did read them with some interest.

Starting with my good friend, Mr. Oberstar, who was very helpful in educating me a few years ago when we served together on Investigations and Oversight and he began teaching me that process, on page 2 you make reference to the fact that the Office of Accident Investigation actually never functioned in the Department of Transportation, but that job was taken over by the National Transportation Safety Board. In your judgment, does that work out adequately now that the NTSB is independent? Do we need a duplicative office in DOT?

Mr. OBERSTAR. No, I don't think we do. I think NTSB operates the safety function—the oversight function of safety—in an effective manner. I think they ought to have a little more power to enforce some of the recommendations that are made, but I don't see a need to reestablish within the Office of Secretary an accident investigation unit. I brought it up simply to show that while the intention was good, to have some independence within the Department, it didn't work out; and to achieve that independence, the function had to be removed from the Department.

Mr. GINGRICH. On page 4 you talked about the notion of a fixed term for the Administrator—actually, I'm not sure it was on page 4. That's where I wrote the note.

Are you at all concerned—and it's a question that I'm going to come back to with several other Members in their testimony—are you at all concerned that a fixed term would lead an Administrator to be harder to reach if they did, for example, become captive of the bureaucracy?

Mr. OBERSTAR. I think it might create some problems. I thought that through, the fact that an Administrator has a definitive period of time during which he can't be removed except for cause, and not subject to change. But say an Administrator were appointed in the second year of a new President and carried over to the succeeding President's Administration and could not be removed, that would give him some continuity and independence. It also might give him a little sense of being a czar and operating without, perhaps, a sense of responsiveness to outside concerns those of the Congress, those of the NTSB, those of the traveling public. I think we have to recognize that all of those are human frailties and possibilities. But because we have the oversight function in this committee and in comparable committees in the Senate, because there is the constant review process in appropriations, the NTSB looking over their shoulder, and public scrutiny, I think that those are sufficient restraints upon an Administrator.

I think the benefit of continuity and consistency in carrying out an overall plan overshadows the concerns I initially had that you just expressed, about an Administrator possibly becoming too entrenched and too insensitive.

As for the other point you raised, whether he would become "captive to the bureaucracy," I think not. I think the greater fear is that which we've already experienced, of an Administrator who is sort of "shrugged off" by the bureaucracy and FAA because they know that they're going to be around there longer than most Administrators.

Mr. GINGRICH. Let me return to that statement.

First, let me go to my friend from Oklahoma.

Mr. INHOFE. Thank you, Mr. Gingrich. I had requested to ask just one question out of order here because I have to make another commitment and then return later.

In terms of responsiveness, I'd like to ask each one of you if you have any response to this two-part question.

Number one, when we were going through the proposed rulemaking change having to do with Mode-C and Controlled Airspace, I had a request that I wanted to be considered before the final rule was drafted. I made an attempt to talk to the Secretary and at that time was told that he was washing his hands of it and that he was not going to have any involvement in it because he was going to leave that to the FAA and to the experts that might perhaps have more technical knowledge.

So the first part of the question is, do you think that independence might partially be justified, because when things get hot it's independent anyway?

The second part of that question is that I was equally disturbed last week and the week before when I tried to get hold of the Administrator, and he did not return my calls and I was not able to talk to him. My only request was that I would like to talk to him about one alteration in the proposed rulemaking before they had it cast in stone. He did not respond to me. Would independence allow them—or provide for—more responsiveness from the Administrator to Congress or to the elected officials?

Mr. OBERSTAR. As I said earlier, I think there's always that possibility that greater independence of the Administrator, longer term, greater sense of stability, may generate within that person a sense that "I don't have to be responsive to Congress." That won't last very long, I think, because we do have the ability to compel his presence before committees——

Mr. INHOFE. My point is, we have that now.

Mr. OBERSTAR [continuing]. And to require him to be responsive to questions. What I'm concerned about is the other side of the coin, an Administrator who can be there long enough to put into place policies and procedures and see them through to completion rather than having his authority flaunted or rejected or turned aside by the bureaucracy. I think that is the greater concern from my standpoint. I think we in the Congress always have the means, now as we would under an independent FAA, of making an Administrator responsive.

Mr. MOLINARI. My gut reaction, Mr. Inhofe, would be that you would be far better served under the existing structure in attempting to get your point known than you would be under an independent agency. And certainly, as Mr. Oberstar said, with all of the pressures that we in our various committees can bring on him, and the fact that you can call the Secretary of Transportation and express your displeasure at the fact that your calls are not being returned, you have a lot of tools available to you today. If you make it an independent agency, I wonder what tools you would have available to you.

Mr. RINALDO. I think it would be in pretty much the same position if it were an independent agency. An independent agency, we have to bear in mind, would still be subject to oversight by a variety of groups. It would include OMB. It would include Congressional committees. The Administrator could still be hauled before that committee, and I think he would be responsive. I think it would promote continuity. It would promote effectiveness. It would remove political influences.

I think the biggest problem that we're faced with is the fact that FAA, on the one hand, is interested in promoting the airline industry, and on the other hand is supposed to regulate it. Probably the best example I could give you—you gave an example of something that happened to you—is from my district, at Newark International Airport. We still have a continuing problem as a result of the Expanded East Coast Plan. And as I mentioned in my testimony, while Mr. McArtor favors setting national noise control standards, which I certainly think would be a massive and giant step in the right direction, he's been stymied by the Department of Transportation, which opposes such standards. And I think an independent Administrator would probably opt for such standards and wouldn't have someone like DOT looking over his shoulder, someone who doesn't have the expertise that FAA would have when it comes to noise pollution and when it comes to safety.

So above all else, I would favor a separation of the two. When it comes to the term of the independent Administrator, I don't know whether seven years is the right amount of time or not. To me, that might be a little too long.

Mr. INHOFE. I thank Mr. Gingrich for letting me take this out of order, but I wanted to make the point that I support the independence; but when you hear the argument that it's not going to be as responsive, I'm suggesting that it's not responsive today.

Mr. BARTON. Jim, let me comment on that.

In my particular bill, the Federal Aviation Administration would still be within DOT because the private corporation and the incorporators are made up of the interest groups involved on a daily basis with the aviation transportation system, I think the procedure and the organization that created the whole convoluted process for the Mode-C decision would be entirely different. It might eliminate the need for a Member of Congress to have to call the Secretary of Transportation or the Administrator of the Federal Aviation Administration.

Mr. INHOFE. Thank you very much.

Mr. GINGRICH. If I might, I want to build on my colleague's question and go to Mr. Molinari for a second.

I thought your testimony was particularly insightful in your appreciation—which I know you've acquired the hard way by an awful lot of very, very diligent work—into the notion of the culture of the FAA; in fact, as you put it on page 2, that "No structural change will, in and of itself, solve these problems."

That leads me back to the question that I asked Mr. Oberstar, and I'd approach it again from another angle.

Two questions. The first one is, isn't it a fact that Administrators consistently tend to become captives of the bureaucracy, that it happens relatively quickly? And why would you think that having a set period of time for that Administrator would significantly change that? You have sort of an all-carrot strategy—I believe it's on page 5—in which "Bureaucrats, knowing that their boss will be around for more than just a few years, will be willing to follow the plan."

I would just ask you, isn't it equally likely that bureaucrats, knowing that their boss is going to be around for a few years, will make an extraordinary effort to ensure that he follows their plan and buys into their policies? What's your reaction to that?

Mr. **Molinari**. Well, I've given a lot of thought to this subject, Mr. Gingrich. My feeling is that if you have an Administrator in there for a seven-year term, you're not so likely to have them become captives of the bureaucracy. If you have someone come in knowing that they're going to serve 18 months or 2 years or that short a period of time, they almost have to rely upon the people around them. I can remember when Don Engen came to the Investigations and Oversight subcommittee and was sworn in. He was sitting there with the hierarchy and I said to him, somewhat facetiously, "The best thing you could do for yourself and the agency would be to fire everybody around you." What I meant by that was that he was going to find himself in a position where they were going to try to control him and lead him by the nose.

I think that that necessarily occurs because of the fact that we've had short tenures in our Administrators. I think that if we do go to a seven-year term we're more apt to find a stronger Administrator, insulated from the pressures of being removed from office, who would be able to deal with the bureaucrats as he should.

Mr. **Gingrich**. So from your standpoint, you're convinced that in fact the pressure will come downward rather than upward on balance?

Mr. **Molinari**. Yes. I think it would work to the benefit of the system. A strong Administrator should go in there and revamp what is happening and get rid of that damned mindset that has existed for decades, really, start to develop a plan to attack the morale problem that is still with us today—probably worse than it was in 1981—in the controller workforce.

That has to come from the top. I think there's a better attempt being made of late, but they've inherited a system that needs change and that's not going to come about, I don't think, until we change it at the top. Change must come from the top.

Mr. **Gingrich**. Let me ask one other question, and any of the five of you may comment on this for a second before I go to the other gentleman's specific things.

I was reflecting on Mr. Oberstar's earlier comment about continuity. As I remember it, most of the appointees who leave do so either out of frustration or for a better job opportunity. In fact, our problem in keeping people in the Government below cabinet level has been a problem of turbulence not caused because they were forced out of their jobs in the sense of a policy conflict, but just occurred—I think the average is 21 months for a senior, sub-cabinet job.

Mr. **Molinari**. Well, that's the point and that's the reason for my bill, frankly.

I think if you start off saying, "Look, I've got this job for seven years. It's my baby, and you can tell me what you want"—whether it's the Secretary of Transportation or anybody else—"I'm going to do the job that I've been vested with the responsibility for doing," and of course, now we're coming up to the election cycle. Vice President Bush has already announced that all top level people are going to be replaced; obviously, if Dukakis wins, the same thing is going to happen. So we start that process all over again.

Wouldn't it be healthier if we faced this election knowing that an Administrator who is in there and is doing a good job is going to remain for a fixed term so that we have that very badly-needed continuity? It's very, very frustrating and something that's been with the system for a long time. Frankly, I think what happens is that we get a little too much political injection into the system in that somebody that likes the idea—and I'm not suggesting this for any one person or anybody I'm thinking of—that it's nice to say, "I served in an Administration and held the job of Administrator of FAA." I think some people may have a tendency to want to do that, albeit not for a long period of time.

We're looking for the professional, somebody who is going to go in there for a relatively long period of time and say, "I'm here for a while. I'm here to oversee this thing." Not somebody who is a revolving door who is going to walk out of this place in two years and say, "I'm going on to make some money now in the industry."

Mr. GINGRICH. Mr. Barton, I have a small question and then two large ones.

On page 1 you explain how close your district is to both Dallas-Fort Worth Airport and Houston Intercontinental, and the Chairman looked at me in disbelief. How long is your district?

Mr. BARTON. It's 290 miles, approximately. When you take off from one airport, by the time you get up to 1,000 feet you're over my district; and as you begin to land at the other airport at about 1,000 feet, you're over my district.

Mr. GINGRICH. So Southwest Airlines spends a great deal of its time over your district, making money back and forth between the two——

Mr. BARTON. Well, they spend a great deal of time over my district. How much money they make would be up to Chairman Kelleher to tell you.

Mr. GINGRICH. Okay.

You mention in your testimony that "The Corporation stockholders would be limited to" and then you have a list. You don't have passengers.

Mr. BARTON. That's true.

Mr. GINGRICH. If you are a "flying public" kind of person, might you not think you have interests different than the list you have?

Mr. BARTON. That's a possibility, but I would hope not a probability. Theoretically all the folks that we've involved have the best interests of the passengers at heart. It would be very difficult to set up a system by which passengers elected a member to the board. It is conceivable. There was some discussion of that issue and quite frankly, Congressman, we couldn't find a way to make it equitable. Does a passenger who flies every day get more votes than a passenger who flies once a year? Things like that.

Mr. GINGRICH. Well, let me ask a second question about that.

You talk about a board of directors elected by these six classes. Would the airlines all get together and elect a member?

Mr. BARTON. Well, they could do it however they wanted to do it.

Mr. **Gingrich**. But if it's in the law——

Mr. **Barton**. The airlines have 40 percent of the stock. They can elect whoever they want to the board of directors.

Mr. **Gingrich**. When you say "they," would Texas Air—to take a Texas example—have a larger vote than Southwest, to take another Texas example? Or would they have the same vote?

Mr. **Barton**. I can't answer that. We haven't gotten that far into it, to be totally honest about it.

Mr. **Gingrich**. I think you've done a lot of innovative work here, and as a former college teacher I'm learning the hard way that when you shift from the theoretical lecture to writing the bill, it all of a sudden gets dramatically more complicated.

Mr. **Barton**. I recall that the voting shares would be based on the percentages of stock owned within the class, like for the airline class, would be based on the revenue miles flown by that particular airline.

Mr. **Gingrich**. Okay.

Congressman Lewis, in your testimony you raised the case which I was going to raise but you did it in the opposite direction. Your suggestion that we eliminate the responsibility of the Administrator for the promotion of air commerce—the example I was going to use in the negative which you used in the positive was NASA. In fact, the Soviet model of space traffic would have figured out that the shuttle blew up because they launched it when it was too cold the night before, and the simple act of waiting until it got warmer and not launching when it was too cold would have saved us a year and a half of space progress.

Isn't there in fact a very, very great danger in terms of American jobs and American pioneering, that a bureaucracy which truly believes that safety is its only assignment would radically shift toward a level of safety concern that would be irrational in terms of the cost benefit of most passengers.

Mr. **Lewis**. Well, that's probably true, Mr. Gingrich, but at the same time in relation to NASA, NASA became a real PR tool for the United States. It became a challenge to meet schedules. When we started our first launch, it took days to get the launch. The second one, it took weeks, and then we were back into hours. I've been at the Cape when we've had launches that, when we were off 10 or 15 microseconds, there was concern among the NASA people that they weren't hitting the target right on the money.

But I think that when you look at the commerce of the FAA, the FAA has been established for 30 years and giving them the dual responsibility for promoting air commerce back in 1958 was fine. With deregulation in 1977, we've been setting up airlines and air traffic systems of complexity that is just mind-boggling. And to say that you have to have the safety responsibilities as well as the commerce responsibilities, as I mentioned in my testimony, is like the fox watching the henhouse. You can't do any wrong, and you certainly can cover your mistakes. But unfortunately, with the public situation that we had with the Challenger, the mistakes could not be covered. I think the same thing is happening right now in FAA when we're looking at the safety features and the safety systems that they have applied. It became more or less routine, just a regular thing, day in and day out, so they do not provide the necessary inspections. And they also want to protect the airlines, as well.

Mr. GINGRICH. Let me ask Mr. Rinaldo to build on that answer. Is it your judgment that we'd be better off to split the safety and the air traffic functions, and have some part of the Government responsible for the operations and somebody else responsible for the watchdog?

Mr. RINALDO. That's a good question. I think it's essential that what we do is get the promotion of air travel out of the FAA so that the FAA can concentrate on safety, noise pollution, and other problems. I don't think there would be an excessive amount of safety-related activities taking place to the point where it would affect the airlines adversely. I think it would be a very, very positive step, and I think the Expanded East Coast Plan is probably one of the most dramatic examples that can be offered of something being put into effect that did, I'll admit, serve a worthwhile purpose, but was put into effect without consultation with affected parties, without any noise pollution studies; and after being put into effect, an attitude seems to have arisen that it's working and it's not going to be changed. Just in our area, for example, where we currently have a study that's underway, by a shift of merely a few miles planes would be flying over the ocean instead of densely-populated areas. I cannot believe that this isn't something that cannot be achieved very simply, despite the fact that some of those air routes are reserved for the military.

Mr. GINGRICH. Let me thank all five of you. I think it's a sign of how important this issue is and the level of ferment that is underway that you would spend this much time out of a morning with us, and for my part, I am very, very grateful.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Skaggs?

Mr. SKAGGS. No questions, Mr. Chairman. Thank you.

Mr. MINETA. Mr. Boehlert?

Mr. BOEHLERT. No questions, Mr. Chairman.

Mr. MINETA. Dr. Rowland?

Mr. ROWLAND. Thank you, Mr. Chairman. I do want to make a comment and ask a question. I do appreciate very much all of you being here this morning to focus on a problem that is so current and necessarily needs to be addressed.

I guess that a couple of decades ago there was a tendency to try to bring all agencies under one umbrella. Now it seems that that perhaps is not working as well as it should work. I know that in the few years that I've been here on this subcommittee and on Mr. Oberstar's subcommittee, that we have seen the present Administrator of the FAA come before these committees and be under intense fire about what's taking place in the FAA, about safety, about air traffic controllers, inspections, not getting weather monitoring equipment in place—I mean, it just seems to be a constant scenario that goes on all the time.

So do you think that that situation would be relieved to some extent by taking FAA out of the Department of Transportation, that the FAA Administrator and upper-level personnel wouldn't constantly be under fire, that they would be able to perform their jobs better and we wouldn't——

Mr. **Oberstar**. If I may respond, I think that just taking the agency out of DOT in and of itself is not sufficient. It is important, but it is not sufficient. In doing that I think we must also restructure that agency. I think that the act of removing FAA from DOT gives us an opportunity to make some other needed and very, very important changes—break down the regional structure, remove those nine regions, consolidate them into three with none of the three to have the authority or power that the nine now have; remove that authority to Assistant Administrators of FAA in Washington to assure uniformity and consistency within the agency.

Third, to give the Administrator a fixed term so that he will have that continuity of service and not be subject to being jerked around by one or another of the Department of Transportation Secretaries. Taking the agency out of the Department also removes that all-too-frequent temptation of Secretaries of Transportation to kind of drop in on aviation whenever it seems to be a popular or pressing national issue, and then back away from it when there may be some really tough issue that has to be decided; leave that up to the Administrator, let him dangle in the wind.

I think the Administrator ought to have all that responsibility and authority.

The fourth thing is that I think we have to deal with two other problems, procurement and pay/compensation for hardship positions in order to assure upward mobility of competent personnel within the agency. I don't share the concern, I think it was a question rather than an expressed view, by Mr. Gingrich that there might be an overemphasis on safety to the point of making safety unbearable from a cost standpoint. I think the FAA is sensitive to balancing cost and safety. But I want to see an agency in which safety permeates the entire operation.

Mr. **Rowland**. I want to thank the gentleman for clearly outlining the many points that should be considered and not just saying that we need to get the agency out, but that there are many other things that need to be done, too. So I really appreciate that.

Does anybody else have a comment on that?

Mr. **Barton**. Mr. Rowland, I'd like to say that I agree with everything Congressman Oberstar just said. I know that my bill is at the extreme end of the proposals here, because I'm saying "privatize," but everything that Mr. Oberstar said about procurement, personnel practices, safety considerations could be resolved through privatization. If you go to a private corporation, you give the FAA the oversight for safety and solve a lot of problems. You don't have to worry about complying with all the various Federal pay regulations. If you want to hire some of the air traffic controllers back that were fired in 1981 or 1982, you can do that because it would be a private corporation. If there is a piece of equipment that is working in Europe, you don't have to go through the complex procurement procedure that we go through now. You solve a lot of those problems.

I understand that there are some legitimate concerns about the privatization solution, but you would have a much quicker response time. I think we would have a much more flexible system, and I think that with proper review by your committee and alterations as needed, it would work. You would meet all of the concerns that these gentlemen have so ably expressed.

Mr. **Molinari**. I think I'd like to follow up on that, because Joe raises a very interesting question that I hadn't thought about. If we had a private corporation that had taken over and operated FAA, you can bet your bippy that they would have rehired some of those air traffic controllers that were fired back in 1981, something I tried to do and am still trying to do.

But, Mr. Rowland, under the existing structure if the FAA Administrator is not performing pursuant to the standards that we would like, you do have that layer above, the Secretary, that can come down hard and oftentimes does come down hard on the Administrator and on the FAA. And I think that's helpful; I don't think that's something that we want to lose, and it's for that reason that I have not lent my support to an independent FAA.

Mr. **Rowland**. I noticed your eyes light up when he mentioned that it might be possible to rehire some of those air traffic controllers. [Laughter.]

Mr. **Molinari**. Well, it's interesting because I've talked to some people who were at the FAA and occupied high positions and left; and as soon as they left, they came to me and confided in me that they felt that I was right and that that was what should be done. So I suspect that if we went that extra mile and had an independent FAA, that probably would be one of the first things that would be done, which I think sustains my position and those who have supported that position.

Mr. **Rowland**. Well, you've certainly worked very hard on that——

Mr. **Molinari**. Thank you.

Mr. **Rowland** [continuing]. And I've enjoyed working with you over the years.

Thank you very much, Mr. Chairman.

Mr. **Mineta**. Mr. Ballenger?

Mr. **Ballenger**. No questions, Mr. Chairman.

Mr. **Mineta**. Mr. Bosco?

Mr. **Bosco**. I have no questions, Mr. Chairman.

Mr. **Mineta**. All right.

Let me just bring up one area, and that is this issue of Section 305 that Mr. Lewis raises in his bill.

I wonder if any of the Members can cite any particular instances where there has been a conflict between regulating and fostering aviation that has manifested itself to the detriment of public safety. I'm wondering if any of you might have any examples of that.

Mr. Lewis, are there any particular instances that you might be able to recount where that conflict between the promoting and fostering of aviation versus the regulating of it?

Mr. **Lewis**. Mr. Chairman, I don't think I could put my finger on any particular area where there has been a discrepancy where commerce has preempted air safety. However, I do have some concerns that with the R&D that is not being done in the FAA at this point in time—we just recently had a hearing in our subcommittee and I was very discouraged when the hearing was over with the lack of response that I did receive from the FAA—I think it's "business as usual." We're not going to make anybody mad, and at the same time we're continuing to use graveyard reactions on our inspection systems and on our R&D. In my judgment, there is no long-term R&D in FAA right now, and I believe that should be the prime, specific function that they should be looking at in order to be the watchdog of air safety.

But if they also have to promote air commerce, I do not see how they can come down hard on this airline or that airline, or say that the airlines are unsafe, or that this particular thing is unsafe to fly; they have to say, "We are doing our job to promote air commerce."

Now, I think FAA is doing a good job overall with the responsibilities that they have. But I believe that with the complexity of the air systems and air travel today, they are falling behind. They are not being budgeted properly. They are not allocating their budgets as they should be, and I have not taken a position on the bill of my friend, Mr. Oberstar, but I certainly see a lot of warrant in that particular bill. I believe that this is something that we've got to have, an independent area of thinking so that they're not biased by the industry saying, "Don't come down in this area and don't come down in that area; we will fix that."

I can give you one instance—and I can't say this has to do with air commerce, because it had nothing to do with FAA—but the Aloha Airlines incident was Aircraft Number 151 off the Boeing line. Number 150 blew apart over Taiwan in 1981. Now, this had a severe corrosion and rust problem. The kits to repair this were sitting in the hangars. Now, you can't even find a report today in Washington that tells you about that particular problem that happened in 1981. We could very well have avoided that Aloha problem.

So I think they should be the watchdog of safety. That should be their specific responsibility, not promoting commerce.

Mr. OBERSTAR. Mr. Chairman, if I might pick up on Mr. Lewis' comment.

I think he's rendered a great service by suggesting that language be removed or that mission be taken out of the responsibility of the FAA. The notion of promoting aviation commerce is an archaic concept that has no place in the current role and responsibilities or mission of the FAA. It may have had a role 40 or 50 years ago when aviation was in its infancy, but aviation is quite capable of promoting itself.

One example that I might cite is the enormous pressure exerted by, first, foreign carriers, and later, certain U.S. carriers, on the FAA to remove the over-wing exits on 747 aircraft. That was a decision driven by economics and not by safety.

Now, I think there would always be within the FAA a responsiveness to aviation economics regardless of whether that language is in the charter of the agency or not. I think removing it also removes the tendency of that concept to penetrate the thought process and the culture of the agency.

Mr. MINETA. Mr. Rinaldo?

Mr. RINALDO. One specific example would be the Expanded East Coast Plan. The motivation was good, to reduce delays, but it was put into effect without a noise pollution study and without a lot of other considerations that should have taken place.

I think if you look at the overall picture—obviously you don't have time right now, but if you went into it in the detail that I've gone into it—you would see that a better plan could have been devised if noise pollution and some of the other factors had been taken into account. That would not only have satisfied air travelers, but it also would have satisfied the citizens of the areas over which those planes fly. And I think that citizens and residential areas and noise pollution are things that should have been taken into account, but instead it seems that it was just put into effect without some of the considerations that should have been taken into account.

Mr. MINETA. Well, let me thank you, all the Members on the panel, for being before us and really adding to this block of knowledge that we're going to have to sift through in order to come up with a program. I think there's a very strong interest in wanting to do something. The question is on what we really want to do. All of you, both in terms of your bills plus your contribution here, have helped toward that end. Thank you very, very much.

Mr. BOEHLERT. Mr. Chairman?

Mr. MINETA. Yes, Mr. Boehlert?

Mr. BOEHLERT. Before we close the book on this panel I'd like to know if Mr. Barton's statement constitutes a covert endorsement of Mr. Molinari's plan. [Laughter.]

Mr. BARTON. Well, I don't know about the definition of "covert." I think Mr. Molinari has some great concepts that he's trying to bring before the committee.

Mr. BOEHLERT. Thank you.

Mr. MINETA. Thank you very much.

[The prepared statements of Messrs. Oberstar, Molinari, Rinaldo, Lewis, and Barton follow:]

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Testimony of Representative James L. Oberstar
Before
Subcommittee on Aviation
Committee on Public Works and Transportation

Mr. Chairman, I welcome the opportunity to appear before you today to address the problems facing the Federal Aviation Administration and this country's aviation system.

The nation's airspace is uniquely a federal government domain. The airspace belongs to all Americans; it should be managed in the broadest public interest and public good.

Twenty-two years ago, when Congress created the Department of Transportation, it was so concerned with safety that it specifically wrote into the first paragraph of the section transferring the Federal Aviation dministration Agency into the new DoT, this solemn admonition: "that there are hereby transferred to the Federal Aviation Administrator, and it shall be his duty to exercise the functions, powers and duties of the Secretary pertaining to aviation safety."

Congress was so profoundly concerned that safety be maintained and preserved that at least six separate references are made throughout the Department of Transportation Act and accompanying Committee report to the need for a separate, independent safety function.

Congress found that because the Aviation Agency set standards for equipment and crew performance and its personnel were directly concerned with flight operations, it was considered desirable to have a staff apart from the Agency for investigation of fatal aviation accidents. To carry out that objective, the Department of Transportation Act specifically created a separate Office of Accident Investigation, independent from the FAA, within the Department of Transportation to which would be transferred the former CAB investigative staff, but separate from the National Transportation Safety Board.

It is an intriguing footnote to the Department of Transportation Act that this office so frequently referenced in the legislative history and of which so much was expected, never saw the light of day. No sooner was the new Department created, than the responsibilities of the Office of Accident Investigation were simply shifted over to the NTSB.

It is even more interesting and instructive for our purposes today that the goal of a truly independent Accident Investigation Office, (NTSB) within the Department of Transportation could not be satisfactorily achieved; eight years later, Congress passed yet another Reorganization plan removing NTSB from the DoT and establishing it as an independent agency, which it remains today.

The same must be done for the FAA. We are at a point where the FAA must be given a special, independent status in order to effectively carry out its responsibilities of setting standards for equipment, crew performance and separating aircraft.

In May of this year, I introduced H.R. 4650, legislation that restores independent status to the FAA. The legislation would reorganize the FAA into three regions, Eastern, Central and Western. The three regions would help to eliminate costly and inefficient duplication of effort that occurs throughout the existing nine regions. In addition, three regions will be more responsive to central policy and decision-making by FAA.

Too often, FAA Regions operate as autonomous fiefdoms. For example, in early 1983, the Boeing Aircraft Company applied to the FAA Northwest Mountain Region for certification of a new configuration for the 747. The Region reviewed the appliction and accompanying data for several months and notified Boeing the new configuration met all of the existing standards governing exits.

Toward the end of 1984, the first modified 747 with overwing exits removed was delivered overseas. FAA headquarters in Washington, D.C. found out about the modification from the Association of Flight Attendants, more than 1 year after Regional approval and almost two years after the modification application was submitted by Boeing.

It is inconceivable that a decision to remove exits from an aircraft, a decision so vital to the safety of the flying public, was made by a regional office without the knowledge of FAA policy makers in Washington.

Even more incredible, testimony elicited from our Investigations and Oversight Subcommittee hearing of June 24 - 26, 1985 revealed this was not the first time an aircraft had been modified without the knowledge of FAA headquarters.

Having the FAA operate within the Department of Transportation inevitably divides responsibility from authority. This can lead to the Department and the FAA working at cross purposes.

In 1984, at the urging of this Subcommittee the FAA developed a proposed rule requiring protective breathing equipment, that met standards required for the approval of newly manufactured equipment, be made available for flight crews. The proposed rule also required flight crews to be trained in firefighting techniques. The proposed rule was transmitted to DoT in October of 1984. DoT returned the proposed rule criticizing the cost benefit analysis. In March of 1985 FAA resubmitted the proposed rule to DoT. The proposed rule was not cleared by DoT and OMB until September of 1985, almost one year after it was initially submitted by FAA.

Mr. Chairman, as you well know, this frustrating tale of inertia deals only with the proposed rule, not with the additional time required for the promulgation of a final rule. With the safety of the flying public and the people who operate our aircraft at stake, we can ill afford to delay needed safety regulations through bureaucratic gridlock.

In addition to removing FAA from the Department of Transportation; H.R. 4650 also grants authority to the Administrator to establish a separate pay rate and grade system for FAA employees. This flexibility is essential for the Agency to hire and retain highly trained and qualified personnel. Employees would continue to remain subject to the protections and requirements of the Federal Civil Service System.

The Administrator will also have the authority to grant allowances over and above basic rates of pay for positions that are subject to extraordinary costs of living expenses, or job functions or skills that are essential to the management or operation of the Agency. An allowance granted by the Administrator may not exceed 25% of an employee's basic rate of pay.

Finally, the legislation directs the Deputy Administrator to find ways to improve the FAA's procurement process.

Mr. Chairman, I believe the proponents of change have reached a consensus with many of the groups who operate and use this nation's aviation system; the FAA needs to be restored to an independent agency to help it meet its mission of assuring the highest possible level of safety in commercial and general aviation.

GUY V. MOLINARI
14TH DISTRICT, NEW YORK

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

SUBCOMMITTEES:
INVESTIGATIONS AND OVERSIGHT

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TESTIMONY OF

REPRESENTATIVE GUY V. MOLINARI

BEFORE THE SUBCOMMITTEE ON AVIATION

ON

FAA'S EFFECTIVENESS

JUNE 22, 1988

Mr. Chairman, thank you for this opportunity to testify regarding FAA's overall effectiveness and my legislation, H.R. 3567, to set the FAA Administrator's term of service for seven years.

After participating in the subcommittee's last hearing on the effectiveness of the FAA and having reviewed the transcript of that hearing, it is obvious to me that the problems the witnesses raised are really based on the FAA's current mind-set and how it approaches problems and reacts to them. No overall structural change will, in and of itself, solve these problems. Problems regarding insufficient numbers of personnel, personnel restrictions, and procurement are in the end related to this basic mind-set.

In fact, for most of the problems raised in the subcommittee's prior hearing there are, I believe, solutions which can be developed and implemented within the FAA's current structure. One example: we learned at the last hearing that the FAA has the ability to provide wage incentives through demonstration projects, special pay rates, and direct hire authority. Yet they have failed to aggressively implement these programs to replenish the depleted airway technician work force or the inspector work force.

The FAA is a reactive agency. They respond to tragedy, to accidents. Only after the Delta crash at Dallas-Ft. Worth in August 1985 did the FAA demand that pilots be trained for poor weather conditions, such as microbursts. Only after the crash in Cerritos, California did the FAA work on Mode-C transponder regulations, enhanced TCAS systems, and increased TCAs.

The fact is, the FAA has consistently failed to acknowledge that there are problems until they reach critical proportions. Let me cite a few examples.

As we all know, in 1981 over 11,000 air traffic controllers were fired for illegally striking. FAA claimed that they could rebuild the work force within eighteen months because the pre-strike work force level was too large. It could do more with less. For a number of years we tolerated having a smaller work force believing the FAA that everything was alright and that they were rebuilding the system. Traffic, meanwhile, kept growing at record levels. Five years after the strike and still years away from a replenished work force, the American public started to worry about air safety. The FAA answer remained everything is fine, we have the safest system in the world. Still no plan was developed to solve this crisis. Today, seven years after the strike, and five and a half years after the FAA-predicted recovery date, there are still 4,000 fewer experienced controllers today than before the strike.

FAA failed to alter its controller training process throughout these past seven years, even though fifty percent of trainees were failing to become controllers. Furthermore, the FAA in the last seven years never once asked or proposed legislation for geographic differentials or incentives so that experienced controllers would remain in the system. Moreover, they have stubbornly opposed efforts to selectively rehire 1,000 of the best former controllers.

Even at times when the FAA attempts to plan for the future, its mind-set gets in the way. The National Airway Systems (NAS) Plan, for example, is an attempt to meet the needs of the airway system for the 21st century. The plan, not thoroughly thought-out, soon developed delays. The FAA, however, did not alter its plans and we are now seeing the consequences.

It had determined early on that the modernization program would eliminate the need for one-third of airway technicians jobs. Despite the delays in implementation of the advanced automated technology, the FAA kept depleting the maintenance work force. They failed to adapt to reality. There minds were set and they would not change to new circumstances.

Now the FAA is met with a crisis. Yet their response is minimal. They could, as we said earlier, adopt incentive programs, demonstration projects, special pay rates, etc., but they have failed to do so. (I will soon be introducing legislation to replenish the technician work force by setting staffing goals and providing incentives for experienced maintenance workers.)

Organizational structure changes will not alter this type of mind-set. Making the FAA an independent agency, or an authority, or overhauling the FAA in any other major way, will do little to improve this thought process. Having the same people under a different roof is not a solution.

In the last few months the FAA, in what appears to be a response to all the talk about reorganization, has made some structural changes itself. Recently the regional directors lost some of their authority to FAA headquarters. Last week, four new executive directors -- a hierarchy above the Associate Administrators -- were appointed. I see no evidence that these changes will provide the quick relief needed in solving the most pressing issues of aviation safety today.

What the FAA needs is a strategy, a plan, a blueprint for the future. They need a strong leader that will develop and implement that strategy. That is why I have introduced legislation that would set the Administrator's term for seven years. In that period of time he would be able to develop a strategy for the future, and see that his vision is carried out. In that time he or she will be able to shape the agency. It takes time -- as much as two years -- to learn the complexities of this technical agency. It can take that long to earn the trust of mid-level management. Bureaucrats, knowing that their boss will be around for more than just a few years, will be willing to follow the plan. They will no longer think, "He will be gone in a few months, I don't have to do that."

The FAA needs a leader who is willing to adapt to change, who realizes that the FAA does make mistakes, and knows that the rhetoric put out by the public affairs department is not a solution to real crises. They need an administrator that will take hold of, direct and control the organization. One way we can insulate the Administrator from the pressures that will be brought upon him from within or without the FAA, is through a set term.

The seven year term gives the Administrator the ability to set long range planning, a strategy for the future, direct the control of the agency, and hold subordinates accountable. It offers the agency the stable, consistent, strong, independent leadership it so desperately needs. Most importantly it enables the agency to break away from its current inertial mind-set.

Mr. Chairman, I, once again, thank you for this opportunity and would be glad to answer any questions you may have.

TESTIMONY OF
REP. MATTHEW J. RINALDO

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
JUNE 22, 1988

Good morning. Before I begin my remarks today, I'd like to commend Chairman Mineta for his strong leadership in holding these hearings on improving the effectiveness of the Federal Aviation Administration.

The question of how to deal more effectively with the enormous growth in commercial aviation in the decade since deregulation remains one of our thorniest public policy problems. I know that under your leadership, Mr. Chairman, this Committee will do its utmost to ensure the continued safety and efficiency of the Nation's air transportation system.

I am here this morning to endorse the concept of an independent FAA. In April of this year, I introduced H.R. 4346, which is essentially the same as the original version of S. 1600, Senator Ford's bill to remove the FAA from the Department of Transportation. I understand that S. 1600 has undergone substantial revision during consideration by the Senate Commerce Committee, but that its basic goal of an independent FAA remains intact. I support that goal.

In my view, Mr. Chairman, the current system for regulating American aviation has ~~has~~ become too cumbersome to meet the increasingly challenging demands of a deregulated air transportation environment. The FAA has toiled for far too long under the excess weight of a dual mandate.

As presently structured within the Department of Transportation, the FAA is in the ambiguous position of promoting the airline industry while also regulating and enforcing aviation procedures and safety standards. Because these are often conflicting goals, I think we need to streamline the FAA's operations so it can once again perform its paramount regulatory role effectively.

The massive growth in commercial air traffic has enhanced the FAA's importance to the point where it can no longer be treated as simply another agency in the Department of Transportation's bureaucracy. With the FAA's identity as an independent regulator and enforcer of safety defined more clearly, the Department of Transportation can assume the responsibility of promoting air travel.

The dynamism and sophistication of the FAA's activities do not lend themselves to bureaucratic oversight by the Department of Transportation. Given the sophisticated technology involved, the rate of growth in the system, and the need for sound, timely decisionmaking, this double layer of bureaucracy mitigates against the implementation of sound aviation policies.

The battles between the FAA and the Transportation Department have gone on for too long, as is obvious from the outcry for reform heard from the flying public, the airlines, air traffic controllers, and virtually every other group on the

American aviation scene.

In the interests of keeping my remarks brief this morning, Mr. Chairman, let me cite the situation in northern New Jersey, which provides a perfect example of where the FAA's dual role and its subservience to the Transportation Department have impeded sound policy. The FAA's Expanded East Coast Plan has resulted in an intolerable noise level for many of the communities south and west of Newark International Airport. Phase one of the Plan created three new departure routes, two new arrival routes, and six realigned routes over the state.

After much public protest, the General Accounting Office issued a report in April that was highly critical of the FAA for not conducting an environmental assessment of the Expanded East Coast Plan to determine the level of noise pollution it would engender in this area. GAO stated that, "because many important characteristics of the plan were known to FAA before the plan was implemented, FAA could have foreseen that the plan would have a significant effect on some parts of New Jersey and result in controversy."

To my mind, the problem is this: Given its responsibility to promote the aviation industry, how can we expect the FAA to aggressively pursue its myriad procedural and safety responsibilities? It has to be one way or the other. No organization, no matter how well run, can be expected to promote and regulate an industry at the same time. Frankly, the FAA must be reformed to be more of a watchdog and less the airlines' best friend.

This is not a problem unique to New Jersey. To further complicate an already messy situation, while FAA Administrator T. Allan McArtor favors setting national noise control standards, he has been stymied by the Department of Transportation, which opposes such standards. The Transportation Department's reluctance to promote such standards is a slap in the face to the millions of people nationwide who suffer from an intolerable level of noise pollution. Conflicting positions such as these leave aviation policy adrift at a time when we can ill afford to waste time.

Before I close, Mr. Chairman, I would like to emphasize the magnitude of the challenges that will face this already overburdened system in the future. The level of revenue passenger enplanements in this country stood at 305 million in 1982. That number is expected to balloon to 487 million this year and reach an astounding 600 million by 1992. In four years the level of passengers will have doubled in a decade. Only if we act now to streamline the activities of the FAA can we face such staggering growth with confidence. I urge the Committee to lend its most careful consideration to reforming a system faced with massive challenges.

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HON. TOM LEWIS

STATEMENT BEFORE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION

IMPROVING EFFECTIVENESS OF THE FEDERAL AVIATION ADMINISTRATION

JUNE 22, 1988

Hon. Tom Lewis
Statement Before
Subcommittee on Aviation
Committee on
Public Works and Transportation

Improving Effectiveness of the Federal Aviation Administration

June 22, 1988

Thank you Mr. Chairman.

I am pleased to have the opportunity to testify before the Members of the Subcommittee on Aviation on Improving the Effectiveness of the Federal Aviation Administration.

There are many suggestions on how to improve the effectiveness of FAA. I do not have the only answer but I do have an idea that I think will clarify the mission of the agency and increase its effectiveness in improving air safety. That concept is to eliminate the responsibility of the Administrator of FAA for the promotion of air commerce.

Legislation that I have introduced, H.R. 4685, will repeal section 305 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1346). That section states, "The Administrator is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad."

My concern is that this provision, as written, may lead to conflicts with the mandated duty of regulating air safety. The legislation simply makes it clear that the major duty of the FAA Administrator is regulating air safety.

This change is needed for several reasons. First, it makes FAA's mission very clear - it is responsible for air safety.

Second, the impact of the legislation will be to change FAA's emphasis on air safety. The safety record of the aviation industry continues to improve from the standpoint of safe passenger miles traveled. But today there are more white knuckle flyers than ever before and they are concerned over the adequacy air safety. Most air travellers want even safer skies. But under the existing system, FAA must, on one hand, develop ways of improving air safety while, on the other hand, be concerned about the impact on encouraging air commerce.

The legislation I have introduced, would olarify FAA's choice in that while the impact of its actions on the industry would still be a concern, the Agency would not consider the impact on the encouragement of air commerce.

As the Ranking Republican on the Transportation, Aviation and Materials Subcommittee, I have examine FAA's research budget in great detail. As a consequence, I have come to the conclusion that it currently is deficient in both depth and breadth of air safety research. For example, there are no generic research programs directed toward making the cabin interior both fire resistant and one that will not produce toxic gases. In fact, there are essentially no appreciable long-term research programs, outside of National Airspace System work, and one of the reasons, I have been told, for this lack of activity, is a concern over the impact of the results on the encouragement of air commerce. However, my informal surveys indicate that the traveling public will be happy to pay for any increased cost through ticket prices, if the cabin interior is made completely fire resistant.

The legislation, H.R. 4685, is not a new or novel concept. On March 24, 1988, Secretary of Transportation James Burnley testified before the Aviation Subcommittee of the Senate Commerce, Science and Transportation Committee. In his statement he said, "Because FAA is charged with promoting and protecting the industry's commercial interests, it is sometimes reluctant to take safety and enforcement actions that impose significant costs and burdens on that industry."

As you know, Edith Page of the Office of Technology Assessment, testified before this Subcommittee on June 2 and, after noting FAA has this dual mandate, recommended, "...explicit establishment of the safety function as preeminent for the FAA Administrator....'

I do not think that FAA should be in the business of promoting aviation commerce. That is clearly a job for the private sector. The major job of the FAA should be safety. However, if the promotion of safety entails the recommendation of one brand name of technology over another, my legislative intent is that this is acceptable so long as the recommendation is based on safety considerations and not on the promotion of commerce related issues.

Critics of H.R. 4685 say that the promotion of commerce provision is necessary to provide checks and balances on the FAA regulatory process. They maintain that without the commerce provision FAA will regulate the industry into oblivion by requiring all reinforced steel aircraft that are capable of withstanding any collision with the ground.

However, this argument ignores the fact that there are checks and balances within in the FAA procedures that, in my opinion, are sufficient to make sure that every view is heard within the Agency.

For example, all rules proposed by FAA must follow the provisions of the Administrative Procedure Act, which includes having the chance to participate in rule making and the right to judicial review of the rule. Moreover, Title X of the Federal Aviation Act, addresses the procedures by which any person may appear before the Agency and be heard; as well as judicial review of FAA orders. Consequently, there are established avenues for the industry representatives to make their views known within the Agency and deletion of the provision on promoting commerce will have no effect on these avenues.

Moreover, industry and the aviation community are in daily communication on an informal basis an a variety of issues.

I would also like to point out that NASA is an example of an agency that does not have a provision requiring the encouragement of commerce. Nevertheless, the United States space industry is one of the strongest in the world. The Agency has responsibility for advancing space technology and the industry has the responsibility for the promoting of space commerce.

In conclusion, I believe that the elimination of the provision that requires FAA to encourage air commerce will benefit the American flying public and will not have a negative impact on the industry.

This is but one step directed toward improving FAA and restoring the confidence of the American public in the safety of air travel. The legislation, along with other more sweeping legislative measures being considered here today, will benefit the industry, the Agency and the flying public.

Mr. Chairman and Members of the Subcommittee, thank you for allowing me to testify today. I look forward to working with you in the future to find ways of improving the effectiveness of FAA.

TESTIMONY OF CONGRESSMAN JOE BARTON
BEFORE
THE PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION

JUNE 22, 1988

Mr. Chairman and members of the subcommittee, I would like to thank you for asking me to testify today. These hearings are the first step on a long road toward ensuring the continuation of a safe and efficient national aviation system. Now is the time to act because we have time to study and scrutinize the preliminary indications of our unstable air traffic control system. Rarely do we in Congress have this opportunity to act instead of react.

Although I am not a member of this committee, I have a keen interest in aviation, just as each of you do. Two of our nation's largest airports border my district: the Dallas-Fort Worth airport and the Houston Intercontinental airport. Also, several of our nation's largest air carriers, Texas Air and American Airlines, are headquartered in Texas.

About this time last year, during my frequent flights between Washington and my district, I began to notice an air traffic control system increasingly overburdened. You know the facts as well as I do, so I will not elaborate. The question I asked myself as I saw the deterioration was: what can be done?

The organizational structure of the Federal Aviation Administration (FAA) served our nation well from its creation in 1966 through the late 70's. However, the rapid increase in volume has made internal constraint on the FAA apparent. Since 1980, the number of passengers has increased from 315 million to over 460 million. The FAA estimates that by the turn of the century, emplanements will nearly double the 1984 levels. Unfortunately, given the inevitable constraints of a government bureaucracy, the FAA cannot adequately respond to the growing needs of the air traffic control system.

The FAA has made and is continuing to make a good faith effort to solve these problems. However, federal personnel and procurement regulations pose hurdles that simply cannot be overcome under the current system. Air traffic control facilities remain understaffed, the civil service system provides few competitive incentives, and facilities need modern equipment technology. Simply speaking, the FAA's current air traffic control system lacks the flexibility to respond and the incentive to respond.

The most qualified air traffic controllers don't want to work at the busier airports. A controller's salary is based on experience, not on location. If you were given the choice of working at New York La Guardia or Orlando Florida for the same salary, I imagine most of you would wisely choose Orlando. In addition to less stress, the cost of living would be close to half of New York. The same situation would be true in Chicago and Los Angeles, and as a result many of our nation's busiest airports are becoming severely understaffed.

The FAA continually faces needless difficulties responding to equipment needs in the marketplace, because the Department of Transportation is bound to our cumbersome budget process which holds captive $10.5 billion in trust funds. This burdensome procurement process causes the FAA's "modern" technology to be already out of date before it is put in place.

The inability of the FAA to respond to the growing needs of the air traffic control system will eventually culminate into a much larger safety problem. While the statistics are debatable, terminal area operational errors, total operational errors, and near mid-air collisions have increased dramatically in the past decade. Now is the time for our ATC system to be examined, expanded and modernized.

Merely taking the FAA out of the Department of Transportation and establishing an independent agency is not enough to solve the problem. We can't just put a band-aid on the FAA and hope it gets better. I believe we need significant changes that truly reflect the benefits of our free enterprise system.

This May, after studying several alternative solutions, I introduced innovative legislation incorporating several excellent ideas for improvement. My bill, H.R. 4396, proposes to divest ATC facilities and personnel to a nonprofit, user-owned corporation. The corporation's stockholders would be limited to airlines, private pilots, business aircraft owners, airline pilots, air traffic controllers, and federal government users. Five presidential appointees would serve as the original incorporators. One hundred and eighty days after their approval by the Senate, the original incorporators will turn over the corporation, all facilities and equipment, to a Board of Directors elected by these six classes of owners.

The corporation will then be empowered with the ability to establish "non-discretionary fees" for air traffic control services. Realizing a privatized air traffic system would create a natural monopoly, the corporate charter reflects all interests of the aviation community. This user-owned model avoids the potential for monopoly pricing. As a backup to the user-owned theory, this legislation also instructs the Department of Transportation to establish a fee review and appeal process.

Lastly, H.R. 4396 would transfer all rights of airport control towers, landing aids, and landing slots to the airport owners themselves. The purpose behind this action is twofold. First, this transfer would allow airports to offer their services on a supply-and-demand basis. Secondly, the legislation would allow controllers to be employees of the airport instead of the corporation. This would in effect "decentralize" the controllers, allowing each airport authority to have and pay for as many controllers as necessary to maintain proper staffing levels. Salaries could be set based on local conditions, not national standards.

I would like to specifically point out that this bill does not follow a laissez-faire theory of economics. The Federal Aviation Administration will retain all existing safety functions. This legislation cleanly separates FAA's dual role of promotion and regulation. The FAA would no longer have a conflicting purpose. They would be able to focus on maintaining the safest aviation system possible. The FAA would retain responsibility for certifying airlines and aircraft, licensing pilots and mechanics, and developing and enforcing regulations for both the design and safety of aircraft. They would also have safety oversight on procedures of the air traffic control system.

The hurdles and roadblocks of our burdensome personnel and procurement regulation would be overcome by creating an environment free of the constraints of government bureaucracy. Equipment standards would be set by the FAA, but the management procedure itself would not be encumbered by the numerous federal requirements. New, state of the art technology could be much more quickly put "on line."

Mr. Chairman, I look to you and your committee to work together with the aviation community to promote the needed changes. I don't claim that my bill is a final solution. It is a starting point to focus the discussion on revolutionary changes necessary to protect air safety and efficiency. My bill should be regarded as a vehicle to help mold the future of our nation's aviation industry.

Mr. MINETA. At this time I'd like to call on the Honorable Jim Burnley, the Secretary of the Department of Transportation.

Mr. Secretary, we have your statement. It will be made a part of the record, so please proceed in your own fashion, sir.

TESTIMONY OF HON. JIM BURNLEY, SECRETARY OF TRANSPORTATION

Secretary BURNLEY. Thank you very much. Good morning, Mr. Chairman. If I may, let me just run through the statement; as Secretarial statements go, I think it's one of unusual brevity.

I do appreciate the opportunity your hearings have provided to discuss an issue we all care about deeply, the role of the U.S. Government in aviation safety. A lot of effort has been expended by you, the Senate, the aviation community, the Administration, and the President's Aviation Safety Commission to address this vital issue.

As I have said repeatedly, the time has come for fundamental reform. Aviation has been changing rapidly in recent years, and marginal changes in the Federal role will not suffice if we are going to catch up and then keep up with the rate of change.

These hearings are particularly timely because we still have an opportunity to act in this Congress. It will require bold action, but I am committed to working with Congress to achieve real—not cosmetic—reform.

I continue to remain open to any solution that will permanently fix what's broken. Earlier this year, I set out what I believe to be the basic criteria by which the benefits of any proposal should be judged.

First, it should address the problem of rigid personnel rules that prevent efficient deployment of key personnel in the Air Traffic Control System.

Second, it should remove the burden of abstruse procurement rules that prevent timely acquisition of new technology.

Third, the proposal should liberate the Air Traffic Control System from the uncertainties of the Federal appropriations process and ensure adequate resources on a long-term basis.

Fourth, there must be adequate oversight and maximum accountability to ensure public safety.

I had listed a fifth criterion in earlier testimony: Consistency in both safety regulation and in delivery of air traffic control services at every level of the organization in charge of each. I am pleased to report that since then we have made a lot of headway on that problem administratively as a result of recommendations made by the DOT/FAA Task Force on Internal Reform, co-chaired by Administrator McArtor and Assistant Secretary Jon Seymour. To ensure consistency in the interpretation of policies and regulations nationwide, the task force recommended major changes in the management structure of FAA's nine regions. In addition, the task force recommended improvements in personnel, procurement, budgeting, and rulemaking procedures. We are now in the process of implementing these recommendations.

Unfortunately, our ability to make administrative changes to address the personnel, procurement, and budget problems afflicting the Air Traffic Control System is limited. For basic reform, legislation is necessary. However, I think we agree that it is highly unlikely that Government-wide reform of personnel, procurement, and budget processes of the sort needed for the Air Traffic Control System will be enacted by Congress in the foreseeable future. Thus, if these problems are to be resolved so the Air Traffic Control System can operate and grow in line with the aviation system, specific legislation must be enacted.

I want to commend Senator Ford for his leadership in addressing this issue. I will be communicating my specific views in S. 1600 to the Senate in the near future. However, as presently drafted, I do not believe S. 1600 goes far enough.

The only way to free the Air Traffic Control System permanently of the debilitating red tape that hinders it is to break the operation out of the FAA and the Executive Branch. Although separating the operational side of the FAA from its other functions may be complicated, it can be done; and it is good public policy to do so.

Mr. Chairman, I share your view that regulation of aviation safety should remain within the Executive Branch of the Federal Government. As you know, National Transportation Safety Board Chairman Jim Burnett also believes that the Department provides needed oversight of FAA's regulation and enforcement activities. In his words, "The FAA as a whole sees the world through aviator's goggles. DOT is more apt to look at issues through the passenger's window." This is not an insult to the thousands of dedicated men and women who strive mightily every day at the FAA to give us a safe, efficient aviation system. It is simply recognition that we are more likely to have the safest system possible if the regulation of aviation safety is subject to the checks and balances inherent in being a part of a cabinet department. It also assures the aviation community and passengers of a voice at the cabinet table.

I look forward to continuing to work with this subcommittee and the Senate Aviation Subcommittee to develop a workable proposal for basic reform.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Secretary.

Let me start with some of the issues as they specifically involve the FAA, because I find that a number of the problems that are associated with the FAA are really not of their own making. Make no mistake about it, some are of their making, but I frankly believe that many of those problems exist because they are the result of the Reagan Administration's regulatory and budget policies.

As a case in point, we have seen regulations that have been held up or not issued because the cost-benefit ratio was too low. It's my understanding that it's Administration policy that a safety regulatory initiative will not go forward unless it shows, at least, a positive cost-benefit ratio. I'm wondering, is that the case?

Secretary BURNLEY. Mr. Chairman, that is a general policy, but it has been my experience in the case of aviation safety rulemakings that that has not been a substantial impediment, and that in fact most, if not all—and as I sit here I can't think of an exception—of the significant regulatory proposals on aviation safety during my five years in the Department have shown a positive cost-benefit analysis. As a result, that has not been a significant problem.

The problem of moving regulations has stemmed from a number of other factors. It is the case that in the last five years we have cut back very substantially the average time it takes from start to finish for an FAA rulemaking to be completed. If my memory serves me correctly, in the five years preceding 1983—that would be 1978 to 1983—we were averaging about 32 months on an FAA rulemaking, start to finish, and over the last five years we've cut that down to something in the range of 18 to 19 months. That's still not good enough, in my judgment, but at least it indicates some substantial progress in the right direction.

Mr. MINETA. Well, the time element may be squeezed down a little bit, but going back to the issue of the cost-benefit ratio, does it have to be on the positive side to move forward?

Secretary BURNLEY. Mr. Chairman, the cost-benefit ratio is an analytical tool, and that's the way we try to use it. If you have a rulemaking that has a negative cost benefit, it raises questions about whether the benefit overall is worth going forward with. But again, that has not been a major problem. We do not have a lengthy list of rulemakings where there are any problems associated with cost-benefit analysis.

There is one category that comes to mind where both the cost-benefit analysis and some other concerns have been raised, and that's in the area of ultralights and how we handle those as a regulatory matter. But I would not characterize those as the primary concerns in that case, either. The concerns there that were raised on a couple of ultralight proposals were much more about whether in effect we were going to be overreaching, too heavy-handed in what we did to people who own and operate ultralights.

So again, while the cost benefit on at least one of those proposals was negative, that was not the determining factor. There are no others that I can think of. If there are any particulars that you would like me to address, I'd be happy to.

Mr. MINETA. For instance, what are some of the other considerations?

Secretary BURNLEY. Again, the primary consideration was a practical one: Whether, if we severely restricted the activities of ultralights, it had the effect of making it impossible for people who own and operate them safely to fly in them. It was that kind of a concern that drove the internal discussions on it rather than a simple question of a cost-benefit analysis.

One thing that is important to note is that we are very much aware of the fact, in looking at the cost-benefit question on any rulemaking—not just an aviation rulemaking—that when you're talking about safety and you try to put a value on a human life or injuries, that, one, that's an extremely delicate exercise; and two, that reasonable people do differ substantially in their views about how to do those computations.

So again, it's simply a methodology. It's an analytical tool. We have not let it be, in my time at the Department, the determining factor in aviation rulemaking. Again, the problems that we have had in some aviation rulemakings have stemmed from other concerns, not so much cost benefit.

I do recall an example—I testified about this before the Senate back in March—where the FAA proposed, and it gets a little bit over into that promotional issue you were talking to your Congressional panel about, the FAA proposed to double the time that an airman's health certification would be valid. That had a positive cost-benefit ratio. They estimated the number of human lives that would be lost, but then the estimated the cost in reduced medical examinations, and they got a positive outcome.

Well, Secretary Dole killed that rulemaking because even though it had a positive cost-benefit analysis, she wasn't going to go forward with a rulemaking that on its face generated additional fatalities. She wouldn't do that.

So the experience that comes to mind is one where even where you had a positive cost-benefit analysis, when you look again at what the real world impacts are going to be, we said no.

Mr. MINETA. Mr. Secretary, I wonder if you have any views on amending the FAA's charter by eliminating the phrase, "foster air commerce," as was brought up earlier when we had some of our colleagues testifying before us?

Recently, the FAA issued a new, long-overdue proposed rule on seat strength. I've always been dealing with this whole seat strength issue because, as I recall, the seat strength requirement on the aircraft is 9 G's forward strength, whereas automobile seat strength has a 20 G requirement on them. I could never figure that one out.

But recently, the FAA issued this proposed rule that would require the airlines to retrofit their aircraft with the new seats. As I recall, the proposed rule provides seven years to install the new seats. This strikes me as a long time, even though I recognize the rationale that is to retrofit the aircraft during the normal life of the seats rather than to have them torn out before their useful life expires.

Is this an example where safety regulation is not being as aggressive as it could be because of a conflict in mission—involving this issue of fostering commerce you're regulating safety while minimizing the burden on industry? I note that your own cost-benefit ratio analysis indicates approximately 32 lives will be lost because seven years was chosen instead of five.

Secretary BURNLEY. Mr. Chairman, the question of that particular rulemaking as it relates to the promotional responsibility is not one that is clear and simple. I think that that is an example, more likely, of a case where for reasons I cannot describe because I do not fully understand them, it took the FAA a long time to initiate the rulemaking. I don't think it was a conscious thought about whether or not this particular rulemaking would be unduly expensive.

But you make precisely the correct point, I think. Whether it happened in that instance or not, so long as there is a promotional responsibility—and it's a statutory assignment and it's an assignment that the FAA takes seriously and is very much aware of—there is an inherent conflict, and I do favor removing that language. I think that it would help further, aside from simply deleting language, if the promotional responsibility were affirmatively assigned elsewhere. For example, in the automobile industry we transferred the promotional responsibility during President Reagan's first term to the Department of Commerce from the Department of Transportation, and we left in the Department of Transportation the regulatory responsibilities that NHTSA carries out. I think that's a good model, and Commerce, in fact, might be the right place to put it.

One of the members of the panel just before me brought up the Boeing 747 issue and the number of doors, ten versus eight, the removal of the overwing exits. I consider that to be the perfect example of where the promotional assignment conflicted with the aviation safety assignment. It's also the perfect example of why much more centralization in the regulatory and inspection and enforcement functions is a good idea and why we're doing it.

In that instance, you will recall, a Regional Director of the FAA in the northwestern United States who held certification responsibility over designs of aircraft built by Boeing issued a decision that, if my memory serves me correctly, the FAA Administrator didn't know about until the day it was issued. I remember quite vividly that neither the Secretary nor the Deputy Secretary knew anything about it until it was issued. It was a public matter; it came out. And it clearly, as one of the panel members said, was driven by economics. It was a question of how many seats you could squeeze into a 747, and Boeing's customers wanted to put more seats on the planes. If you took these two doors out, you could put a couple more rows on; that's what drove that decision.

Ultimately, as you know, Allan McArtor, having come in after that sequence of events, made the judgment that he was not going to let that happen and reversed that decision after a good deal of discussion and internal debate had occurred.

But I am very supportive of the notion that we ought to separate those functions.

As I said before, the FAA has three roles today. One, they're supposed to be the "tough cop" in regulation and enforcement. Secondly, they're supposed to provide a service, and that's air traffic, where we want maximum cooperation on a day-to-day, minute-by-minute basis between aviation and the Air Traffic Control System. That's the way it works. And then third, you've got this promotional responsibility. My basic view is that the promotional responsibility ought to go somewhere else; the Air Traffic Control System will do a much better job if it's somewhere else; and you ought to leave with the Department the regulators, the inspectors, and the enforcers.

Mr. MINETA. At that point, let me just ask you, are you looking at that from the perspective of the Department of Transportation as an oversight agency to the FAA rather than trying to get rid of any operational functions that the FAA performs. What would be left of the FAA if you took out air traffic control functions not considering all the pros and cons, but just in terms of taking it out of the FAA?

Secretary BURNLEY. Yes, sir. We would still retain all of the regulatory functions and all the inspection functions including enforcement. We would be in the Airport grants business if you did it that way. We would continue to have responsibility for research and development on issues that were not directly involved in the equipment necessary for the Air Traffic Control System.

Our latest ball park estimate, looking at it in terms of people, is that you would move about 85 percent of the people at the FAA out of the Department, and about 15 percent of that workforce would remain with us.

So I think there would still be a great deal to do. And one of the things, of course, that we would be doing is writing the regulations that govern the Air Traffic Control System, wherever it is housed, because that would need to remain a regulatory function. So there would be no lack of assignments there, but in terms of the operational side of air traffic control, it really is the case that the Federal procurement system slows down—if we do it perfectly, which I freely concede we don't always do—if we do a procurement perfectly, the system nonetheless guarantees that it takes years to buy technology that is rapidly evolving.

I've used examples in other settings, of the host computers that are very good, new computers. The last one will become operational this week. They are in our en route centers. They replaced 20-year-old technology. They are 10 times faster; they are 4 to 5 times greater in their information storage capacity, and we're the only customer that IBM has left because the private sector is buying computers a generation or two beyond those.

Now, don't get me wrong; the host is a major step forward, but the procurement system in the Federal Government is simply not designed to keep up with technology that evolves as rapidly as the technology we buy for air traffic evolves.

When the Congress for whatever reason takes beyond the beginning of a fiscal year to appropriate funds for the Department, and therefore for the FAA, it does have a real world impact. It causes the FAA, in some instances to slow down moving air traffic controllers from one place to another because that costs us money, when we move people; and when you don't know how much money you've got and you're on a one-week or sometimes a two-day or one-day continuing resolution, the people who manage those moves day-to-day slow down or stop moving people. We can do better——

Mr. Mineta. Mr. Secretary, let me ask you——

Secretary Burnley. If I can just finish quickly.

The final point, again on personnel, is that the Federal personnel system doesn't work very well when we have the need to staff in areas of the country where the cost of living varies dramatically.

So there are a lot of things there that I think make getting that operation out necessary, and I am driven by those practical considerations in my views.

Mr. Mineta. Let's just use that example of air traffic control. If you take it out of FAA, what kind of an organization do you put it into?

Secretary Burnley. Well, sir, I have tried very hard—because I view this issue as very important, as you do; I do not view it as politically symbolic and I don't think it's a partisan issue. I know nonetheless that the moment I say, "Okay, here's the Reagan Administration/Burnley Plan to fix it," down to the last subparagraph of a draft bill, that in some quarters I may cause knees to jerk.

So I've tried not to lock myself into a precise game plan, but I can tell you generally, if I may.

Mr. MINETA. Okay.

Secretary BURNLEY. I do believe that something along the lines of a quasi-governmental operation, as is Amtrak, is a useful model. Amtrak is not covered by Federal personnel, procurement, or budget processes. The only part of the Amtrak funding that you or we ever get into are the subsidies. When you buy a ticket on Amtrak, it's not a Federal receipt. When they pay their employees, those are not Federal expenditures. None of us thinks that that's a radical idea; none of us thinks that violates good accounting principles and the consolidated Federal budget. We know how to do that over on passenger railroading, and I think a structural model of that sort is what we ought to be looking at very seriously.

Mr. MINETA. That makes me a little nervous. As I recall this accident in Baltimore, they are now subject to Civil Service rules or something. They're smoking marijuana and drinking beer while they're driving the trains.

Secretary BURNLEY. Well, that was on Conrail, not on Amtrak, in defense of Amtrak. But they are now not only subject to rules that permit us to test and find out those Conrail people we're testing, but because the Congress took the very positive step just a few days ago in passing the Rail Safety Act, for the first time in American history, we at the Department can regulate employee conduct in that industry.

Mr. MINETA. That includes licensing, as I recall?

Secretary BURNLEY. Yes, it does.

Mr. MINETA. Now, going back to the example of setting it up in a private organization, whatever form that might be, how does that save or help us in terms of the procurement policies, in terms of the equipment that that organization needs, or the personnel that they need? Where do they get their funding?

Secretary BURNLEY. Mr. Chairman, to take them in reverse order, on the budget process I think that conceptually and as a practical matter we can work through the creation of a device where the user fees, which we now also know as aviation taxes—the passenger tax, the fuel tax—are charged as user fees by the quasi-governmental organization, or if it were purely private, you could do it that way. And you could in fact, with that revenue stream which today is running in the $4 billion range, start up such an operation without any significant increase in those fees. Over time, obviously, you would review that from time to time.

With respect to procurements, let me give you an explicit example of what the problem is, if I might. Obviously we need to deal conceptually, but I think that sometimes it helps on these issues to look at very concrete examples of what goes wrong.

The former FAA Administrator, Don Engen, asked the Department's Inspector General to do an investigation of why, in buying some radar equipment for the New York TRACON back in 1986 and years before and after that, we managed to take a couple years longer than we should have, and why we had very substantial cost overruns. Our Inspector General did a report which came out last November on that and found the following—I'll spare you the whole report, but let me just read one very brief passage.

The contract had been awarded to Sperry in March of 1986 to do this work, and Sperry had already been in doing some work beforehand because it was an urgent requirement. This is what the IG found: "During the six-month pre-contract period ending March 13, 1986, the FAA elected not to oversee Sperry's work to prevent compromising contract negotiations," following the usual Federal rules about very limited contacts when you've got competitive bidding going on on contracts. "Therefore, the FAA could neither assess the quality of the contractor's work nor provide timely guidance to preclude or minimize schedule slippages. Sperry was allowed to interpret the requirements contained in the Request For Proposal without the benefit of consultations with the FAA to ensure that these interpretations were correct. This lack of interface with the contractor had a significant impact on the contract schedule."

That's one small "for instance." A year ago, the GAO put out a report——

Mr. MINETA. Let me stop you at that point.

Secretary BURNLEY. Yes, sir.

Mr. MINETA. Then if it were outside of DOT——

Secretary BURNLEY. They would be free because they wouldn't be under Federal procurement requirements, if they were outside of the Executive Branch of the Government. They would be free to talk to Sperry all day, every day, to whatever extent they needed to to be sure that they and Sperry were of one mind about what the work was. But because Sperry was already doing some preliminary work at the time that the contract negotiations were going on for the permanent, long-term work to put in new radar. Under the Federal procurement regs, the FAA was required to step back. And what our IG found when he looked at it was that we ended up with a disconnect about the nature of the work.

That's a small example, but nonetheless an example that has cost the Federal Government tens of millions of dollars and we ended up with a couple years' delay. Our IG looked at it and said that in part it was driven by the fact that at the outset there was a basic misunderstanding; that because the communications were limited—the FAA was doing what it was supposed to under Federal procurement regs, in backing off and not talking to the bidder.

Another example is this GAO report of a year ago which reviewed how the Department and the FAA handled the major NAS Plan procurements, and I know that you're conversant with that report. The report criticized the Department in fairly severe terms for having permitted the FAA on some of the major NAS Plan procurements to skip one or two or three of the preliminary steps required by Federal procurement statutes and regs, and praised the Department because in the 18 months before the report came out, we had put the clamps down hard on the FAA in this area and were now making them go over all these hurdles.

Well, I would suggest to you that that makes good sense as a matter of Government-wide purchasing policy, but it makes no sense at all when you're talking about buying radar, computer systems, things that are changing and evolving rapidly and where—again, as I said before, if you're going to have any chance at all of keeping up with the technology, you want to move as quickly as possible. And yet the pressures on the Air Traffic Control System and the people who buy equipment for it are just the reverse. The pressures from GAO on the Department and the FAA are just the reverse, that we should take longer, have more paperwork, have more layers of review.

It just seems to me that this country is going to have a more efficient, better-run Air Traffic Control System if we recognize that while that may make sense if you're talking about Government-wide policies, it doesn't fit this particular operation very well. We need to carve it out so that it's not fraught with those problems.

Mr. MINETA. Thank you very much.

Mr. Gingrich?

Mr. GINGRICH. Thank you very much for coming today, Mr. Secretary.

Let me ask you first of all about two items which are not in your testimony, with the Chair's indulgence.

The first, there's a recent article which you may be aware of by Laurel Parker in the Washington Post on air safety which asks some questions about the Aloha accident and the FAA inspection system, and makes some assertions about FAA inspectors. I wonder if you have any comments for us on that article?

Secretary BURNLEY. Well, sir, I am certainly familiar with the article. The FAA Administrator is quoted in the article as saying that he is concerned, and I share those concerns, about how the system works.

We had, again, another GAO report that was done over two or three years that came out this time a year ago, called "Enhancing Policy and Program Effectiveness Through Improved Management." It was about the Department as a whole; it was a review of how we manage the Department. What that report says—and I'll just ask, perhaps, that pages 18 through 20 of it be incorporated in the record, if we may submit that for the record—what it says is that the FAA made a fundamental mistake in the late 1970's and the early 1980's when it did not recognize the changes that were going to occur in the aviation industry as a result of economic deregulation. It did not plan ahead in a way that would permit its inspection process to keep up. In fact, an FAA Administrator in the early 1980's made the decision that he could cut the workforce 25 percent, and Secretary Dole, some months after becoming Secretary, reversed that decision.

[The following was received from Secretary Burnley:]

[Report from the General Accounting Office, Washington, DC, April 1987]

DEPARTMENT OF TRANSPORTATION—ENHANCING POLICY AND PROGRAM EFFECTIVENESS THROUGH IMPROVED MANAGEMENT—CHAPTER 2

To fully illustrate best proxies, the following sections discuss FAA's initial efforts to deal with the impact of airline deregulation on its air carrier inspection program, actions subsequently taken by DOT to improve the program, and how FAA has begun to bolster those actions to develop a more systematic approach to safety inspection. FAA's program is instructive because management has to balance the goal of assuring adequate inspection coverage with the goals of facilitating airline deregulation and containing the federal deficit. FAA was unable to keep those goals in balance primarily because it was not equipped to evaluate program needs amid rapid changes in the deregulated industry environment. Ongoing improvements initiated by Secretary Dole are intended to help FAA regain and sustain this balance. Other DOT administrations with safety programs also must balance convincing goals as the Department continues to work for economic deregulation, defederalization, and deficit reduction.

AIR CARRIER INSPECTION: IMPORTANCE OF BALANCING SAFETY WITH OTHER GOALS

As a result of the Airline Deregulation Act of 1978, many new carriers joined the commercial airline industry while existing carriers expanded or restructured their operations in response to increased competition. These changes benefited the public with lower fares and broader services. They also increased the workload of FAA's inspection staff when FAA was under pressure to reduce spending.

To enforce compliance with safety regulations and standards, FAA inspectors—in addition to inspecting ongoing operations and maintenance practices—certify the qualifications of new air carriers and major changes in the operating scopes of existing carriers. Industry growth following deregulation greatly increased the demand for FAA certification. To be sure, FAA could not have predicted the magnitude of that demand. But once deregulation became law, FAA had no system for monitoring the impact of industry growth and inspector workloads and staffing needs. Instead, top management set the overall goal of reducing accident rates and delegated decisions on the frequency and scope of inspection work to managers in the field. Until recently, those managers were not provided with definitive guidance or direction on the minimum levels of inspection to be done.

Working short-handed and without clear guidance, local managers gave priority to certification to support deregulation and cut back on inspection work. At the same time many carriers, due to rapid growth and other factors, were having safety compliance problems. Because FAA had stopped collecting nationwide workload data, it did not have information to assess the trade-offs between certification and inspection and the consequences for carrier compliance with safety requirements. In addition, although FAA had assured the Congress that it could deal with workload demands by increasing productivity, no system was put in place to measure resource efficiency and determine whether productivity was improving.

Furthermore, FAA had not updated the staffing standards used in formulating its annual budget to account for significant changes in the types and mix of program tasks, such as additional inspector time required to certify new carriers. As a result, resources were not accurately matched with workload, and FAA could not defend the program against mandated budget cuts. Meanwhile, to meet the goal of reducing accident rates, field offices defined annual objectives and monitored performance in terms of program outputs, including the number of inspections they planned to conduct. Since accidents often result from conditions (e.g., bad weather) that are difficult to relate to inspection work, monitoring outputs did not provide the information FAA needed to evaluate the impact of inspection on safety.

Because of these conditions, FAA appeared unresponsive to public safety concerns and lost some control over program decisions. For example, despite early warnings from the Congress, the National Transportation Safety Board, and internal management ranks that additional inspectors would be required to meet workload demands, FAA did not significantly increase inspection staffing until 1981. Furthermore, the following year it cut the staff to support the goal of reducing the federal deficit, then increased it 2 years later under pressure from the Congress. Until September 1985, nearly 7 years after deregulation became law, FAA was not equipped to tell the Congress how many inspectors it needs.

Today FAA is revamping its program as a result of actions launched by the Secretary in 1984. The Secretary's initiatives resulted in an FAA plan to overhaul program operations and the decision, announced in September 1985, to substantially increase program staff. Four key initiatives were:

National Air Transportation Inspection (NATI) Program.—Conducted by FAA in 1984, NATI involved an intensive 3-month study of air carrier safety compliance and FAA's inspection program. The study inspected the flight operations and airworthiness of 327 carriers and recommended several actions to standardize interpretation and application of safety requirements, provide inspectors with timelier information to conduct their work, and assure that safety rules and regulations are kept current to reflect changes in industry practices. A panel of outside experts, convened by FAA to evaluate safety conditions based on the study's findings, also identified several actions for strengthened program management.

Task Force Report on Flight Standards Safety.—This report, issued in August 1985, was the first in a series program reviews by the Secretary's Safety Review Task Force. Among other things, the Task Force recommended that FAA improve the timeliness and responsiveness of its rulemaking system, standardize safety regulations and policies, and strengthen communications both internally and with the aviation community.

Safety Activity Functional Evaluation (SAFE) Project.—SAFE is FAA's blueprint for overhauling the inspection program. For example, the project's job-task analysis and resultant staffing standards, completed in 1985, were the basis for the Secretary's decision to add 500 inspectors over a 3-year period.

Flight Standards National Avaition Safety Inspection Program.—This is FAA's annual plan for conducting standardized, routine safety inspections as well as special, in-depth inspections of selected carriers and support facilities. The initial program plan, implemented in February 1986, represents management's first step toward institutionalizing the methodology developed for the 1984 NATI study. The plan for 1986 focused inspection work on certain engine repair stations and on commercial carriers that derive significant income from military charter flights. Such carriers were targeted as a result of a December 1985 airline accident that killed 248 U.S. military personnel and 8 crew members.

Based on these and related initiatives, FAA is making a comprehensive, systematic effort to update safety regulations; realign inspector duties and responsibilities to more closely fit conditions in the airline industry; use automated program data to determine staffing requirements; revise its criteria and procedures for hiring and training inspectors; strengthen its ability to anticipate changes in the program environment; and assure that inspection offices receive accurate, timely; and consistent policy and program guidance. For example, inspection findings under the 1986 national inspection plan are being collected and reviewed by FAA headquarters. Headquarters official told us that they are systematically analyzing reported findings. They intend to use the results of their analyses to formulate future annual inspection plans, develop operational effectiveness measures, and furnish field offices with resource management guidance.

Secretary Burnley. This report outlines not only that step but also the National Air Transportation Inspection Program, what we call the "white glove" inspection where we went through for the first time and did these intense white glove inspections. It talks about the SAFE project, an attempt to totally re-do the manuals that the inspectors use, for the first time in 40 years. It talked about the fact that the FAA, as a result of Secretary Dole's Safety Review Task Force and her pushing and demanding that they work hard on this—for the first time, they were working on standardizing their inspection procedures.

Now, we've made a lot of progress over the last four or five years in how the FAA handles inspections. As you know, we've got more inspectors than ever before in American history, and we've got a request up here in the 1989 appropriations bill to hire—if you give us the money— another 300. We're right at 2,000 today.

We're not where we ought to be yet, but we're headed in the right direction. The Washington Post story highlighted, in ways that are consistent with my understanding, some of the areas where there is still work to be done.

But what I can say to you is that for several years we have been pressing very hard. The problem that we've got is very simply that when we began, back in 1984, to address this issue on a fundamental level, to get at all the problems that the GAO identified and talked about, with Secretary Dole getting programs moving, there was so much to be done in this area that we're not there yet. We're on a continuum; again, I think we're headed in the right direction, but we're not quite there yet.

Mr. Gingrich. Let me just for a minute ask one other question off this particular topic. I understand that we're taking up the Department of Transportation appropriation bill tomorrow, and as you and I have talked at length—and I noticed an article as recently this morning about Coast Guard funding—do you have a brief 40 seconds for us on the Coast Guard and what you wish we would do on renewing the funding that was cut by the Congress?

Secretary BURNLEY. Well, Congressman Gingrich, in March the President and I sent a request to the Congress to reprogram $60 million to offset the cut made by the Congress in the CR before Christmas of $72 million in Coast Guard operations. That request has not yet moved out of the House, much less to the Senate, and we do have routine drug patrols cut in half because we can't seem to get the simple authority from the Congress to reprogram those funds. We're not asking for new money; we're simply talking about moving money from other Department of Transportation accounts. I wrote Speaker Wright, in fact, about 10 days ago and made clear that I hoped that he would schedule that for floor action forthwith. We desperately need those funds.

There's another funding issue that is perhaps slightly more on point with respect to this hearing, and that's what's happening to the FAA in the appropriations process. I would ask the members of this subcommittee to weigh in on that process as aggressively as possible. We are facing, on the House side as the bill has been reported out, a $43 million cut in what the Administration has asked for for FAA operations; a $114 million cut in what the Administration has asked for for Facilities and Equipment, NAS Plan account; and when all is said and done, we're not going to be able to do as well as you want us to with cuts of that magnitude.

Again, I think that highlights as to air traffic in particular the need for us to be able to free that system up from the vagaries of the budget process. I'm not talking just about the Congressional budget process; I'm talking about the Government's budget process, Executive Branch as well as Congressional, because it does make it very difficult for the FAA to do its job when you see both tardiness in getting the permanent appropriations bill through and you see cuts of this magnitude contemplated.

Mr. GINGRICH. Can I ask you—I'm going to put you on the spot for a minute——

Secretary BURNLEY. It wouldn't be the first time. [Laughter.]

Mr. GINGRICH. Well, you are a very, very smart man so I'm confident you will dance off of it——

[Laughter.]

Mr. GINGRICH [continuing]. But you do suggest on page 2 that we should "liberate the Air Traffic Control System from the uncertainties of the Federal appropriations process and ensure adequate resources on a long-term basis." As you know, the Administration has consistently opposed taking the Aviation Trust Fund out of the unified budget. How do you reconcile those two positions?

Secretary BURNLEY. Well, I opposed doing it just that way this very morning. Let me make very clear, I am opposed to simply taking it off budget. But I do think that if you take the Air Traffic Control System out of the Executive Branch of the Government and you send with it the revenue stream generated by the ticket tax and the aviation fuel taxes, you then in fact—and I'll use Amtrak as an example again, if I may, Congressman Gingrich—you then in fact are not violating basic consolidated budget principles. In fact, you are reaffirming those principles because you've gotten it out of the Federal Government, so that it doesn't belong in the Federal budget.

I think that's the way to do it, and I think that then you can sell it both conceptually and as a practical matter if you take that approach. But if you simply say, "We're going to take aviation off budget," then you immediately run into the question about the Highway Trust Fund, the Social Security Trust Fund, and all the other programs that have trust funds. I have yet to come up with an intellectually honest distinction to justify taking one off but not the others. I welcome thoughts of anyone who has come up with such a distinction.

So I think if you're going to do this——

Mr. **Gingrich**. I don't think anyone in the Congress has ever actually gotten into that kind of detail. [Laughter.]

Secretary **Burnley**. Well, I think if you're going to do this, what you've got to do is be able to justify getting it out of the Federal budget as a part of getting the function itself out of the Executive Branch of the Federal Government, and then it's honest intellectually; it works; and it has a very important practical and positive effect of permitting the Air Traffic Control System to be managed properly, and that's the key to it.

Mr. **Gingrich**. Let me ask you one last question before we have to go vote, and that is that some people have suggested a fixed term of five or seven years for the Administrator. How do you react to the idea of fixed terms?

Secretary **Burnley**. As a practical matter I think that that probably does a lot more harm than good, because what we need is more accountability. What the Congress and the American people are demanding is more accountability, not less, from all of us who are involved in aviation. If you take an Administrator and you insulate him and give him tenure, and then you get someone who is tilted, has a particular point of view toward a particular part of the industry or against a particular part of the industry, you've got a problem on your hands.

I really think that any Government official with that level of responsibility in the United States Government ought to serve at the pleasure of the President so that if you run into problems you can get that person's attention.

Mr. **Mineta**. Mr. Secretary, recognizing the constraints on the time available to you, I would like to recess but come back and have you answer some questions of the other Members.

Secretary **Burnley**. I'd be happy to.

Mr. **Mineta**. Thank you.

[Recess.]

Mr. **Mineta**. The subcommittee will resume.

Mr. Ballenger?

Mr. **Ballenger**. Thank you, Mr. Chairman.

Mr. Secretary, you and I have discussed this before. I just want your opinion—if we separated the FAA and appointed an administrator with long-term connections, would we be turning the FAA over to the interest groups of the aviation industry?

Secretary **Burnley**. Congressman Ballenger, in answer to a question from Congressman Gingrich, I believe it was, I did say that I think tenure of that sort on the whole is a mistake for anybody with regulatory functions, in particular in the Executive Branch of Government. And I do think that if you simply make the FAA independent and then give the Administrator tenure of that sort, if you get precisely the right human being with tenure who can resist pressure of the kind you refer to, it might work all right. But if you get someone who has a particular bias or tilt—he may be perfectly honest—based upon experience, views, but nonetheless has a tilt or is simply susceptible, more so than someone else might be to that kind of pressure, you create risk. You create risk, and to the extent that you have given that person tenure, you have insulated that person from countervailing pressures, perhaps.

Let me give you the classic issue in aviation. We just saw it again when the Mode-C transponder rule came out last week. It is between how much airspace, and how it's used, that general aviation gets versus commercial aviation. If you get somebody, I would suggest to those in the aviation industry who support tenure and independence, if you get somebody who has a pro-commercial aviation bias or a pro-general aviation bias, you're going to have major problems over time if you get someone with a bias of that sort and you've locked them into the job and nobody can get their attention in terms of evening it back up and making sure that everybody's views and legitimate concerns are taken into account.

Mr. MINETA. Mr. Bosco?

Mr. BOSCO. Thank you, Mr. Chairman.

Secretary Burnley, I appreciate your testimony. I find you generally to be very refreshing and forthsightful.

Secretary BURNLEY. Thank you.

Mr. BOSCO. I want to go back to a question that Mr. Gingrich asked because I wasn't satisfied with understanding your answer, relative to these trust funds.

You have proposed the idea whereby we would take the air traffic control function, finance it through user fees, and remove it from the budget process as being generally a way of enabling them to move faster and smoother and procure better and everything else, and then you made what I thought was a distinction without a difference in terms of what I thought was the very same idea we had with financing aviation infrastructure; that is, charging a user fee, setting that account aside so that it would be available for improving our air infrastructure.

I really am still at a loss to see where your difference is.

Secretary BURNLEY. Okay. I appreciate the chance to clarify.

Let me use the Amtrak analogy again, if I might. There are other examples; the airline ticket itself is a good example.

When you buy an Amtrak ticket, that is not a Federal receipt. It's not in the Federal budget; it does not go to the United States Treasury; it goes to a bank account in the name of Amtrak.

When Amtrak pays an employee, that is not a Federal expenditure——

Mr. BOSCO. I understand.

Secretary BURNLEY [continuing]. And it seems to me that when you buy a ticket to fly on a commercial plane, where there are neither Federal receipts nor expenditures, it seems to me that you have an absolutely defensible case that is intellectually honest, that is clearly distinguishable from Federal programs.

Mr. Bosco. So this would not be a Federal tax as such?

Secretary Burnley. No, sir. It would be just as the airline charges you a price for the service, it would be a price that the Air Traffic Control System charges for its service.

While we raise a lot of objections to the pricing mechanism, another way of looking at it to clarify it further is that when a U.S. airline flies to Europe, it has to deal with something called "Eurocontrol." It pays a fee to Eurocontrol for the air traffic control services that are provided there, so it's that kind of an approach.

Mr. Bosco. Would you then envision to be—you say a quasi-public entity——

Secretary Burnley. Yes, sir.

Mr. Bosco [continuing]. That would have the power to tax itself in terms of these user fees, and would adjust that tax from time to time, depending on what its needs are?

Secretary Burnley. Yes, and I think because of the fact that it would be a monopoly, that you would need to have an oversight device or a review mechanism of some sort. But again, it would simply be that; a review mechanism. It would not——

Mr. Bosco. But it would be governed, presumably, by a board appointed the usual assortment——

Secretary Burnley. In terms of who ran it, yes. I would think you would want to have a board as you would have with any such operation. The usual suspects have to be rounded up for such a board.

A very important question was raised earlier with the panel of Members of Congress testifying about passenger interest. I think that that's much less of a problem when all that you're talking about setting up is an air traffic control device that's going to be regulated by the United States Government through the FAA at the Department of Transportation. Then you still have what you need in terms of checks and balances that will take passenger interests into account. So it's not the same issue, perhaps.

Mr. Bosco. I actually think that's an excellent approach.

Let me ask you another question, too, about procurement, because we had advice at our last hearing after a very extensive study had been made—I think it was by the GAO; I'm not sure—but one of those agencies told us that it really isn't the matter of getting outside of the Government for procurement. What it really was, the FAA wasn't sure what kind of animal it wanted to begin with; it didn't do the preliminary specifications and oversight that needed to be done; that the equipment it was buying was one of a kind that isn't used in every ordinary business, and therefore we can't compare apples and oranges; and that it really wasn't a function of the procurement process, which this report said works fine. It was as function of people not having the right direction to begin with.

I read that and re-read it because it ran contrary to what I've been hearing from everyone. And I thought, maybe there is sense to this, that we're buying this equipment that no one has ever bought before, that the ordinary business doesn't buy—and as you say, business is way ahead of us technologically, but they buy far more standard types of equipment; we're designing computers, the complexity of which would be well beyond the needs of most private businesses. But you reverted back to saying that yes, procurement is a problem, and that that alone really won't resolve this——

Secretary BURNLEY. Let me go back, if I might, and answer you in part with the host computer example.

In fact, host computers are not all that exotic, as computers go. The private sector is buying not only more advanced technology but more complex technology, in some respects. We have to write specific programs that are one of a kind to put in the computers for air traffic control, obviously, and that's where it gets exotic in that particular example. But nonetheless you can either have emphasis on the planning side—and the testimony you were referring to was both the GAO and the Office of Technology Assessment, if I recall correctly——

Mr. Bosco. Right, and you referred to it earlier.

Secretary BURNLEY [continuing]. That testimony hit the FAA basically for poor planning on the front end. And without getting into the specifics, yea and nay, I cannot on the whole fault that view. I think there is clearly a case to be made that there wasn't sufficient conceptual thinking about how all this was going to be fitted together, how it would work. We hired a systems integration contractor to help us figure that out; we had some initial difficulties with the role of that contractor that were sorted out, difficulties that were more our fault than the contractor's, in my judgment.

Congressman, the bottom line on this is that I think we could see that same set of problems in a quasi-governmental corporation, just like we had it at the FAA. This may not be the panacea that fixes particular problems. You can have people who are not farsighted enough anywhere, public, private, or in between. But assuming that you address that problem, whether it's governmental or nongovernmental, and you have that kind of forward thinking, then I think it will be much, much easier and much less complex in terms of endless layers of review to go buy what you've decided that you need and buy it in a timely fashion if you have gotten it out of the Government procurement processes, which are simply not designed to let you do anything quickly.

One further point. One of the reasons in my personal experience that Government agencies on the whole probably do a worse job than the private sector in long-range planning is that we live year to year on funding. And the CEO of the Department of Transportation, in effect, the Secretary and the FAA Administrator, have disincentives in a sense to do that kind of planning because you do an enormous amount of work—you get lots of people working on it, you get a design—but then we have to go to OMB, then we have to come here; we have to come here every year, we have to go to OMB every year, and there are powerful disincentives because we are the Government.

Mr. Bosco. But back to your original point—I agree with you that we would still need procurement standards. We would need to know that these agencies, whether they were quasi-public or completely public, weren't buying things that were unnecessary or that they were buying the right type of computer hardware and software——

Secretary BURNLEY. Right.

Mr. Bosco. What would you suggest? That we develop a whole different set of standards for this agency? Or go through the existing ones and chop off a few layers?

Secretary Burnley. Well, that's a very important and legitimate question, and I think the answer to it is that you've got to design a system that gives you some oversight through a regulatory function. But ultimately, you let them go do it; and you obviously have them under surveillance while they're doing it. You would be able to ask questions of them. But the bottom line is that I think you're much more likely to get that kind of sophisticated planning and intelligent, rationally-based procurement processes if you don't have this agency or quasi-governmental operation as a part of the Executive Branch of the United States Government because the countervailing pressures are so intense.

Again, we get criticized by the GAO for not slowing them down enough, for not making them go through enough preliminary levels of review. That's backwards, in my judgment, in terms of the overall dynamics you want.

But if I can take your question and broaden it very slightly in my answer, let me make the following observation.

It seems to me that on the one hand there is a consensus that fundamental change is worthy in terms of the Federal role in aviation. There are still legitimate, honest, heartfelt disagreements about how to do it.

I think that it would be an historic opportunity that is missed if this Congress adjourns without having taken forward legislative action in this area, and I would suggest that perhaps at a minimum—and I hope we can do more, but at a minimum—if you can enact legislation and give us the basic parameters of what you want, and I've suggested today broad-brush what I think that will look like, and send us off, that in the next Congress my successor—the FAA Administrator's successor—be required to come back to you with a precise, detailed game plan on how to do it, that at a minimum that would be a major step in the right direction. It's not perfectly analogous, but we've had other exercises like that where the Congress says, "All right, we're ready to change this situation in a basic way." You pass a law, you describe in the statute what you want us to do broad-brush, and you tell the agencies to go do it and then bring it back, and you can have a "report and wait" period of 30 or 60 or 90 days, your choice, something of that sort, so that Congress can stop the momentum. But at least you have sent the country and you have sent us an affirmative signal. You've given us a basic road map and you have gotten us moving on this, and I would welcome seeing serious consideration of that approach if, in the judgment of the subcommittee, there's not time to figure it all out down to the fourth or fifth layer of complexity before you adjourn this year.

Mr. Bosco. Mr. Secretary, let me say that I agree with you that we should seize this opportunity.

Thank you, Mr. Chairman.

Mr. Mineta. Mr. Petri?

Mr. Petri. No questions, Mr. Chairman.

Mr. MINETA. Mr. Secretary, there is some question as to whether or not the FAA is capable of buying equipment that performs as well as it should, given the specifications that are put out.

Many times the complaint is that the equipment isn't state-of-the-art, and yet we know that buying state-of-the-art is more expensive——

Secretary BURNLEY. And more risk, I think you would agree.

Mr. MINETA. What do we do in terms of assuring that what we are buying in fact performs to whatever the specifications are that might be put out?

Secretary BURNLEY. Mr. Chairman, as you know and as I mentioned in my testimony, we have got a series of internal reforms underway as a result of this DOT/FAA task force this spring. Administrator McArtor is in the process of rearranging the procurement side of the agency, among other things, as a way of trying to get at that very question among others on procurement. I think he does have precisely the correct notion, which is that we'll do a better job on procurement and get at just that problem if instead of doing it as we have traditionally done it, where you have an office at the FAA in charge of design of all systems—that's in one set of boxes—then there's a different office over here that's in charge of actually running the competitive office, then perhaps you have another office that's in charge of actually getting the stuff installed in the field—that we reconfigure that whole side of the agency so that we have from start to finish on a host computer procurement, an AAS— Advanced Automation System—procurement, the same group of people at the FAA doing the front-end planning, doing the specs, running the bidding process, and then having responsibility for oversight on installation.

That, again, is designed to get at just the concern you have expressed, which he and I share, that sometimes you don't get what you thought you were getting, what the people who designed it in the first place thought was going to come out the other end.

So I think an approach of that sort will help, where we literally have the same officials of the FAA involved, start to finish, on a major procurement.

Mr. MINETA. As I understand it, the FAA has recently requested of OPM a pay incentive program that is similar to what is done at the China Lake Naval Weapons Center.

Secretary BURNLEY. Yes, sir.

Mr. MINETA. I'm wondering, what is the scope of that request and the status of it, as well as what employees would that apply to?

Secretary BURNLEY. Well, sir, we are primarily looking at that as a way to give us more flexibility in paying people in the Air Traffic Control System. We may well use it in other areas, but we're focusing on air traffic control to get at this problem that we're all now aware of, the fact that you can't get people to go live in a city where houses cost three times as much as the city that he or she now lives in, in a healthy economy. They often quit. It's tough to move people around if you have no discretion at all as a manager in what you pay them.

The FAA is in the specific process right now of designing the criteria to be used in deciding what jobs—and we have to submit it to

OPM—what jobs we will specifically get this flexibility for. As you know, the authority that OPM has that they can delegate to us is a pilot program authority, and it is limited as to the number of jobs Government-wide that it can apply to, so it's not an answer to our overall problem on hiring and managing air traffic controllers. But it will give us more flexibility, and this process of writing for OPM's review and consideration and hopefully approval the descriptions of the particular positions and how we would do it is very much underway right now. We hope to get that finished in the next month or two.

Again, it will help, but it is perhaps also an example of what we have to go through just to get a little flexibility right now to be able to do this with some of the air traffic control personnel. We have to stop everything else; we can't just go say to OPM, "Please delegate the authority." We've got to go through this exercise of designing the plan that we would use, take it over, and go back and forth with them about it.

Mr. MINETA. Mr. Secretary, from your detailed knowledge of the discussion a little earlier going down from 10 to 8 doors on the 747, do I assume that you played some role in the final decision by the FAA on that?

Secretary BURNLEY. The role that I played, Mr. Chairman, is that Administrator McArtor told me that upon having considered it, that he was going to continue the requirement of 10 doors. I congratulated him on what I thought was his sound judgment. It was really not a detailed role beyond that.

Now, that was at the end of the process. On the front end of the process, my predecessor, Secretary Dole, and Administrator Engen did have discussions, and I was involved to a limited extent in those discussions. She expressed to Administrator Engen very substantial concerns which I think he shared, in fairness to Don Engen, about the decision which had been made in the Northwest Region to permit taking those two doors off.

Mr. MINETA. A couple of months ago you remarked that the FAA needed the bureaucratic equivalent of a cattle prod to take needed action. Frankly, I found that statement coming from your office a little curious, given the fact that it often has taken Congressional action to get DOT to permit FAA to do something. I also think it has had an impact on morale down at the agency, and I'm wondering if you've had any second thoughts about that comment.

Secretary BURNLEY. Mr. Chairman, I've had no second thoughts about the comment, but I think it's important to keep the comment in the proper context. That phrase, which was not uttered by yours truly on the spur of the moment, was in my prepared testimony in front of Senator Ford's subcommittee. Since you've raised it, let me just very briefly supply other points in that prepared testimony.

I said, "It is to respond directly to the committee's invitation to me to testify 'on the relationship between the FAA and the Department of Transportation as well as other long-term structural changes that would improve the FAA's ability to promote and ensure aviation safety,'" from the letter of invitation that I got from the committee.

"I have been at the Department for one-fourth of its history and I want to briefly describe both some of the strengths and weaknesses of the present structure. I do this knowing that there is some risk that my testimony will be viewed as hostile to the FAA; nothing could be further from the truth, but if I am going to respond in good faith to the subcommittee's request, I've got to show you somewhat more of the iceberg than just the proverbial tip."

And in another passage I said something which I feel very strongly to be true, which is that "The FAA is filled with competent, dedicated professionals who have excelled, particulary in the delivery of air traffic control services; yet the very structure of the agency places them in an inherently untenable position."

And then, the cattle prod reference came in the following passage: "Just as I have been impressed with the superb job the FAA does with limited resources in handling air traffic, I have been equally dismayed at the institutional resistance to improving safety regulations. Sometimes a clear signal from the Administrator or the Secretary is all that is required to get things moving. On other occasions, it has been necessary to use a bureaucratic equivalent of a cattle prod to get the FAA to take needed safety actions."

And as I suspect you are aware, on the very next page of that testimony I cited your statement, Mr. Chairman, in 1984 at a hearing of this subcommittee at which you said, "It is a measure of our frustration with the past performance of the FAA as a safety regulator that we are here today to consider a long list of bills which would direct the FAA to take various actions to further improve aviation safety, particularly in the areas of crashworthiness and fire safety. There is a long history of hearings in this committee, extending back to 1976, urging regulatory actions by the FAA."

And I noted, "Representative Mineta became so frustrated that he demanded that the FAA provide the subcommittee with a monthly report on progress in issuing new cabin safety rules."

So it was in that context, and citing you as one authority for the view, that some days you have to push hard to get action on safety regulatory rulemaking.

I think perhaps—and I saw a couple of the usual anonymous sources quoted—I suspect that the only morale that got hurt by that statement or by your repeated urgings, promptings, demands that they move, sometimes pointing out in strong language that they weren't moving fast enough, is probably the morale of some mid-level bureaucrats. Frankly, as between getting action on needed safety regulations and hurting the feelings of mid-level bureaucrats anywhere in the Department of Transportation, it's easy for me every time to hurt feelings if you have to do that to get things moving.

You know, we're public servants, and you're supposed to show up for work and work hard. And when you've got responsibility for safety regulatory matters you've got particular burdens when you come to work in the morning. So I have not the slightest regret nor second thoughts about that statement, and again would simply invoke you as my comrade in arms in suggesting that some days, that's what it takes.

Mr. MINETA. Well, I think a lot of times the agency does need leadership rather than maybe a cattle prod. That's the only thing I meant.

Secretary BURNLEY. Yes, sir. And again, that's the context of the statement. As I said, on many occasions the Administrator or the Secretary can get things moving by simply saying, go do it. But other days—we're the Government, and it takes a little more than simply saying, go do it.

Mr. MINETA. Again, thank you very much, Mr. Secretary. I appreciate your taking this extra time to be with us this morning in order to complete your testimony.

Secretary BURNLEY. Thank you, Mr. Chairman.

[Secretary Burnley's prepared statement follows:]

STATEMENT OF SECRETARY OF TRANSPORTATION JIM BURNLEY ON RESHAPING THE FEDERAL ROLE IN AVIATION

Mr. Chairman and members of the subcommittee: I appreciate the opportunity your hearings have provided to discuss an issue we all care about deeply: the role of the U.S. Government in aviation safety. A lot of effort has been expended by you, the Senate, the aviation community, the administration, and the President's Aviation Safety Commission to address this vital issue. As I have said repeatedly, the time has come for fundamental reform. Aviation has been changing rapidly in recent years, and marginal changes in the Federal role will not suffice if we are going to catch up and then keep up with the rate of change.

These hearings are particularly timely because we still have an opportunity to act in this Congress. It will require bold action, but I am committed to working with Congress to achieve real, not cosmetic reform.

I continue to remain open to any solution that will permanently fix what's broken. Earlier this year, I set out what I believe to be the basic criteria by which the benefits of any proposal should be judged:

First, it should address the problem of rigid personnel rules that prevent efficient deployment of key personnel in the air traffic control system.

Second, it should remove the burden of abstruse procurement rules that prevent timely acquisition of new technology.

Third, the proposal should liberate the air traffic control system from the uncertainties of the Federal appropriations process and ensure adequate resources on a long-term basis.

Fourth, there must be adequate oversight and maximum accountability to ensure public safety.

I had listed a fifth criterion in earlier testimony—consistency in both safety regulation and in delivery of air traffic control services at every level of the organization in charge of each. I am pleased to report that since then we have made a lot of headway on that problem administratively as a result of recommendations made by the DOT/FAA task force on internal reform, co-chaired by Administrator McArtor and Assistant Secretary Jon Seymour. To ensure consistency in the interpretation of policies and regulations nationwide, the task force recommended major changes in the management structure of FAA's nine regions. In addition, the task force recommended improvements in personnel, procurement, budgeting and rulemaking procedures. We are now in the process of implementing these recommendations.

Unfortunately, our ability to make administrative changes to address the personnel, procurement and budget problems afflicting the air traffic control system is limited. For basic reform, legislation is necessary. However, I think we agree that it is highly unlikely that government-wide reform of personnel, procurement and budget processes of the sort needed for the air traffic control sytem will be enacted by Congress in the foreseeable future. Thus, if these problems are to be resolved so the air traffic control system can operate and grow in line with the aviation system, specific legislation must be enacted.

I want to commend Senator Ford for his leadership in addressing this issue. I will be communcating my specific views on S. 1600 to the Senate in the near future. However, as presently drafted, I do not believe S. 1600 goes far enough.

The only way to permanently free the air traffic control system of the debilitating redtape that hinders it is to break the operation out of the FAA and the executive branch. Although separating the operational side of the FAA from its other functions may be complicated, it can be done, and it is good public policy to do so.

Mr. Chairman, I share your view that regulation of aviation safety should remain within the executive branch of the Federal Government. As you know, National Transportation Safety Board Chairman Jim Burnett also believes that the Department provides needed oversight of FAA's regulation and enforcement activities. In his words, "The FAA as a whole sees the world through aviator's goggles. DOT is more apt to look at issues through the passenger's windows." This is not an insult to the thousands of dedicated men and women who strive mightly everyday at the FAA to give us a safe, efficient aviation system. It is simply recognition that we are more likely to have the safest system possible if the regulations of aviation safety is subject to the checks and balances inherent in being a part of a cabinet department. It also assures the aviation community and passengers of a voice at the Cabinet table.

I look forward to continuing to work with this subcommittee and the Senate Aviation Subcommittee to develop a workable proposal for basic reform.

Mr. MINETA. At this time the subcommittee will recess until 2:00 p.m.

[Whereupon, at 12:53 p.m., the subcommittee recessed, to reconvene at 2:00 p.m. the same day.]

AFTERNOON SESSION

Mr. MINETA. The Aviation Subcommittee will please come to order.

I would now like to call forward Dr. John M. Albertine, Chairman of the Aviation Safety Commission.

Let me just say, first of all, how much I really appreciate all the time effort that you especially, and other Members of the Commission, put in on the work of the Aviation Safety Commission. I know that all of you really did sacrifice a great deal in order to get that very fine work product out, and I just want to express my thanks to you all for that.

Your statement will be made a part of the record, so you may go ahead and proceed in your own fashion. Let me just mention that besides you, Jack, there were six others of the Commission: John Byington, Joseph P. Kalt, Michael E. Levine, Russell W. Meyer, Jr., John E. Robson, and Thomas W. Wathen. So again, all the Members of the Commission, and especially you, Mr. Chairman, are to be commended for your work.

TESTIMONY OF JOHN M. ALBERTINE, CHAIRMAN, AVIATION SAFETY COMMISSION

Mr. ALBERTINE. Thank you, Mr. Chairman. It's a great honor to be with you this afternoon. It's a pleasure to see you again. You and I have known each other for a number of years. I've said this both privately and publicly, that I've been an admirer of yours for a long time, not just for the very fine work that you've done in this area, but the contributions you've made over the years with respect to public policy. I'm delighted to have the opportunity to be with you again, Mr. Chairman.

Mr. Chairman, if I can, I'd also like to submit several editorials which I have which appeared in the Washington Post, the New York Times, and the Wall Street Journal relative to our Commission report.

They tend to be supportive, and I think any time you get support for your work from the Wall Street Journal and the New York Times and the Washington Post, you figure that you've done something very right or something very wrong. But we're appreciative of that support.

Mr. Chairman, being chairman of a Presidential Commission is a wonderful, wonderful honor. There is only one negative associated with it, and that is that you don't get paid. The positives, however, vastly overwhelm the negative, and there are two real positives. One is that you get the opportunity to meet and work with some of the finest people in America from all walks of life, from many different backgrounds, both from the public sector and the private sector. In this case we had some extraordinary people who made a great contribution to this report.

Secondly, it's a great opportunity because it's the one entity in Washington where you have the opportunity to look at a subject, analyze it, make judgments about it without regard to issues like having to get elected and reelected and having to worry about constituent interests, worrying about the Federal bureaucracy, worrying about political doability on the Hill, worrying about the interest groups and people who are involved in the industry. So you really have an opportunity to try to call them the way you see them, and every word in this report really does reflect that sort of underlying view, that we tried to suggest remedies to problems that we saw based upon what we think is in the best interest of trying to promote aviation safety in America.

Mr. Chairman, there are a number of recommendations which we make in the report. There are five which are terribly important, in my view.

We call for national certification for jet carriers; we think that's important.

We talked at some length about the need for more and tougher inspections, more in-depth inspections, surprise inspections, the separation of the certification and surveillance functions and the enhancement of those with respect to jet carriers.

We talked about the need to tighten the standards with respect to commuter airlines.

We talked about the need to tighten some of the standards relative to general aviation.

But all of those recommendations—and they are terribly important—I don't think are nearly as significant as the recommendation that we made relative to the governmental institutions which are established to try to promote aviation safety in our country, namely, the Federal Aviation Administration.

One of the issues that jumps out at you, frankly, when you look at this industry is the tremendous quality of the people who are involved. We spent a lot of time with the senior management of the airlines; we spent a lot of time with the people in the trenches, maintenance people, airline attendants, pilots; we spent a lot of time with the senior management of the FAA and the senior management of the Department of Transportation, as well as people in the trenches at the FAA. There is just no question that the quality of people in this industry is extraordinary and their dedication to safety is absolutely paramount.

So nothing that we said in this report should reflect in any way, shape, or form criticism of any individuals, but there is no doubt that if you really examine the Federal Aviation Administration carefully, there are very serious problems in that agency.

The first problem is that it is a highly technical agency which needs to be able to plan in order to operate efficiently and to maximize safety. The agency has one heck of a time planning because of the budgetary problems which it faces. Budgeting by continuing resolution is just no way to run a highly technical agency like the FAA, and that's a serious problem.

Secondly, there is no doubt that the Civil Service rules of the Federal Government do have the effect of hamstringing the Administrator of the agency. As a result, you have an awful lot of perversions which occur with respect to that policy. For example, we found that in highly congested areas there is an understaffing with respect to air traffic controllers, and in areas which are less congested there is an overstaffing. It has to do with the inability of the agency to pay cost of living differentials, which is imposed on it by the Federal Civil Service rules.

And three, there is no question whatsoever—if you go into the FAA and you talk to people in the trenches as well as the senior management—there is no doubt at all that the procurement process is a mess. The FAA is falling behind in terms of computers. It's falling behind in terms of communications technology and high-tech radar. Again, it's the result of regulations, rules, that are Government-wide that are imposed on this highly technical agency.

Finally, I have a very high regard for the Secretary of Transportation. I think he's done an excellent job, frankly, of focusing the attention of the American people on the issues of air safety, but I would respectfully disagree with his analysis on the issue of the need for a fixed term for the Administrator of this agency. I am involved with the Chairman of Farleigh Industries in the running of seven operating companies, Mr. Chairman, and there is just no question that the key to any organization, whether it is a governmental organization or a business, a private sector or not-for-profit organization, is leadership. You need the top people to be people who can motivate and inspire their workforce, and there is frankly no way that that can happen when you have a situation where the top person is not around for a long period of time.

Now, I don't think we should make a presumption—the Secretary made a presumption this morning that somehow, the process of Government leads to people who may be put into positions of great authority who aren't very good. I don't agree with that at all. I think most people who have been appointed by Presidents to run Executive Branch organizations have been top notch people, and I frankly think that that will happen in the future. I think that the presumption should be that we'll get a good person to run this highly technical agency, and that person, he or she, in my view ought to have a chance to work his or her will on the organization.

Mr. Chairman, those are the problems. When we looked at the problems and decided what solution or solutions we would recommend, we all collectively felt that, again, any institution—whether it's public sector or private sector, any institution—needs a shake-up from time to time. That's a healthy phenomenon, frankly. I happen to be involved in a company which has a huge acquisition pool at the moment. I believe that the merger and acquisition movement has been good for the economy. I think it imposes discipline in the marketplace on corporate America, and I think that's true in Government as well.

I don't think you can solve these problems by simply trying to tinker with the agency as it now exists. I really think that this subcommittee would be well advised to consider an approach which is dramatic, which is innovative, which will capture the imagination of the American people and the people in the industry. I would recommend that you consider what we talked about in our report, which is that we would take the entire FAA out of the Department of Transportation and put it into a new authority, which we call the Federal Aviation Authority, modeled, I believe, after the Federal Reserve System, where you have an organization which is governmental in character and nature with a great deal of public accountability. I would oppose—and I know it's true for all the other members of the Commission—we would oppose an attempt to try to privatize this agency. It ought to be within the Government and publicly accountable. But it ought to have the kind of independence with a technical agency needs in order to achieve maximum flexibility to promote aviation safety.

So what we're recommending is a new Federal Aviation Authority with a nine-member board, each member of which is appointed by the President subject to confirmation by the Senate, just as the Board of Governors of the Federal Reserve are appointed by the President subject to confirmation. But it would be an independent organization, capable of designing its own personnel rules, its own procurement procedures, and we would recommend that it be funded outside of the appropriations process through a user fee system which is, we think, rational and effective.

And frankly, Mr. Chairman, if this committee and this Congress were to move in that direction, if you were actually to do what we recommend which is to create a whole new Authority, independently funded, out from under the appropriations process, out from under OMB review, out from under Congressional oversight, with its own Civil Service rules, its own personnel rules, its own procurement rules, we felt that probably in that kind of atmosphere it might be useful to provide an additional device—a redundancy, if you will—in order to try to make sure that the public is sure that its safety is being protected, and that's why we call for the appointment of a Director of Aviation Safety, a so-called Safety Czar that the media talked about.

Let me say on this point, Mr. Chairman, we did consider the idea that Secretary Burnley talked about this morning of taking the Air Traffic Control System out of the FAA and putting it into a separate authority while keeping the regulatory side inside the DOT. That's an idea that, frankly, early on I thought had a lot of merit. But as you look at how the FAA runs and you really examine the issue with respect to simply how that kind of double-headed monster would be managed, I don't think it's a very good idea in the end. I think it would be very, very difficult for that kind of structure to be managed effectively and efficiently. And from a public policy point of view, frankly I think what you would probably wind up with is a smaller FAA inside DOT really running the show, and

I don't think that's what's needed in this case. So we would recommend moving the entire organization into a new authority.

With respect to the question of the Director of Aviation Safety, I speak for myself and no other member of the Commission, Mr. Chairman. I frankly think there are a lot of ways to perhaps get at that issue. Maybe that's the best idea and maybe it isn't. Maybe the best idea, frankly, is an independent Federal Aviation Administration inside the Government with the Administrator, perhaps, required legislatively to come up to the Congress and report from time to time to the Congress with respect to the operation of the system and the maintenance of safety in the same way that the Chairman of the Federal Reserve is required by the Banking Committees to come to the Congress quarterly to talk about its ideas relative to the rate of growth of the money aggregates. That might be a better approach.

There may be another one. It may be that you want to give the National Transportation Safety Board more authority in the safety area. But I do think, Mr. Chairman, that it is necessary to try to really shake up the system, to move the FAA into a new entity. I don't think this is a partisan issue; I think it's a bipartisan, nonpartisan issue. It's a question of making Government work more effectively, and I and we think the best way to do that is to scrap the existing system, create a new authority, and allow that authority to manage itself in a way which is consistent with the maintenance of the highest possible degree of safety in this industry.

Mr. Chairman, I'd be happy to respond to any questions and observations you have.

Mr. MINETA. Thank you, Dr. Albertine.

Let me start by asking Mr. Inhofe to start off the questions this afternoon.

Mr. INHOFE. Thank you, Mr. Chairman.

Dr. Albertine, I appreciate your being here and your thoughts, and I find myself in agreement with most of them.

There is a discussion that in achieving independence for the Federal Aviation Administration, its accountability is of concern.

But this seems to be the greatest obstacle that I've heard in discussing it with various colleagues, particularly those who perhaps don't have a background in aviation and are not really familiar with some of the technical problems that exist in the system as it is today.

Have you anything to offer that would be of benefit for those of us who feel very strongly, as do you and most others who have testified, that independence is desirable, to use to offset that argument with our own colleagues, that argument of nonaccountability?

Mr. ALBERTINE. There's a balance, Congressman, between independence and public accountability. We focused a great deal of attention within the Commission on that subject.

There is no question in my mind at all that we ought to have an organization which in fact is publicly accountable. We designed one which we think achieves the desired balance. Every single member of the Board of Governors of the agency that we're talking about is appointed by the President, subject to confirmation by the Senate. We would expect, in the normal course of events, that the sitting

Secretary of Transportation would have a whole bunch to say about each appointment to that board.

On people being appointed for a fixed term, we had some research done on this subject and there's no question that the President would have authority to remove any member of the board, including the Administrator, even though each has a fixed term, that the President felt was not performing his or her function. And as I say, this concept of a Director of Aviation Safety was an attempt to try to impose an additional layer, if you will, to try to achieve more in the way of public accountability. It also is, from a management point of view, perhaps not totally desirable.

So maybe the way to think about this is to think about the Federal Reserve. I think the Congress in 1913, when it set up the Federal Reserve, understood the fact that the control of the rate of growth of the money aggregates is a terribly, terribly important part of the public apparatus of this country. Frankly, in my personal view, it is more important than what the Congress or the President does on fiscal policy. And I think the Congress recognized that you can't have a committee of 535 people trying to decide technical matters like what ought to be the appropriate rate of growth of the money aggregates, so it set up an organization which has public accountability but is independent.

In 1974, the Congress tried to enhance the public accountability by requiring the Chairman to come to the Congress and report to the Banking Committees on the operation of the Fed. And maybe that is a model that has some merit. Maybe the Administrator of this Federal Aviation Authority should be required to report periodically—to this subcommittee, for example—with respect to issues that relate to its operation and give the Congress the opportunity to question what's going on.

Again, I really think it's a question of balance, but I think that that kind of model does serve the public interest, provides for public accountability, but allows for the kind of flexibility necessary to run a highly technical agency.

Mr. Inhofe. Dr. Albertine, were you here when we heard testimony from the authors if five bills this morning, some five different approaches? And I would ask you if you have looked at those and have in your own mind evaluated which of those approaches you feel accomplishes those things that your Commission has found to be desirable?

Mr. Albertine. Congressman, unfortunately, I missed that testimony. I have not evaluated those pieces of legislation. We are trying to make underwear and die castings and such, but I will take a look at those, and if I can get back to you in writing, I will give you my thoughts.

Mr. Inhofe. One of the auxiliary benefits of this independence is, of course, the old discussion of getting the Airport Trust Fund off budget, which we came within 11 votes of doing this year.

If you had the independence—and as I understand your report, it would be self-supporting—how would that affect the current 8 percent on the passenger tickets and $0.12 per gallon a nation fuel that is in existence? Is that going to be adequate or inadequate? How would you look at that?

Mr. Albertine. I asked that question. Our econometricians did an analysis of it and came to——

Mr. Inhofe. Your what?

Mr. Albertine. Our econometricians.

Mr. Inhofe. Oh, that's good.

Mr. Albertine. When I was in school we used to call them economagicians.

Our economists took a look at that question and came to the conclusion that it would probably require a slight increase in the ticket tax; not very much. The revenue sources are about adequate to do what we suggest in the report.

Mr. Inhofe. I see.

Well, your report also talked about the fact that the system is safe, and I was glad to see that. One of the things that has bothered me most during the time that I have served on this subcommittee is that we will hear testimony from people and the media will pick it up and try to make it look like our system is not safe, when statistically it's the safest way to travel. We understand that and we know it.

Dr. Heidi was in my office and is in this hearing today and is very familiar with this; we were talking about the fact that while the safety is there right now, since deregulation we have virtually doubled the number of people who are pedalling around up there and yet we have the same system in place, despite all the money intended to expand the airspace that is not being spent has your Commission evaluated how long we're going to remained if we continue to do nothing? Let's say we don't have this independent effort, we don't jar that money loose, we don't expand the system——

Mr. Albertine. We address that point specifically in the report and suggest that the system is safe now, there's no doubt about it. Its safety is to some considerable extent a function of the fact of the delays in the system being imposed by the FAA because there is not enough capacity for the demand.

Our view is that there is no question that unless something is done which is fairly dramatic, there is increasing likelihood that the system could become unsafe as deregulation puts enormous pressures on, particulary, the desirability for growth in air travel without the commensurate capacity to do so. So there's no question at all that if the FAA continues to fall behind technologically, that we could run into a clear safety problem.

Mr. Inhofe. Thank you, Dr. Albertine.

Mr. Mineta. Mr. Chairman, the Commission's organizational proposal would have an Administrator, a Safety Czar, and then a Safety Committee all potentially involved in the promulgation of safety regulations. This strikes me as rather cumbersome and appears to diminish direct accountability for safety regulations. It also appears that it provides the opponents of a safety initiative with too many opportunities and venues in which to derail the initiative. So I would like to get your comments on my characterization of what was being recommended in the Commission report.

Mr. Albertine. Well, Mr. Chairman, I think your points are well taken. There's no question that it is a redundancy. There's no question that it's cumbersome.

The reason why we decided as a group to propose that additional layer—the thought is that the Director of Aviation Safety in fact would be the official ultimately accountable for the safety of the system, with the Safety Committee.

The reason we decided to do that, Mr. Chairman, is that if you really take our model and you all do what we suggest—which is, you take the FAA totally out from under the appropriations process, out from under Congressional oversight, out from under OMB oversight, out from under the DOT, with its own procurement rules and its own Civil Service rules, that there is a danger that the public could feel that somehow the industry might be in a position to regulate itself. We were being extra cautious, imposing a redundancy to try to make sure that everyone understood that safety was going to be first, second, third, fifth, tenth with respect to the new organization.

I must tell you, speaking for myself as I think about that institutional arrangement, I think there are other ways to try to get at the accountability issue other than a Director of Aviation Safety. As I say, it may well be that another approach could be to have a Federal Aviation Authority—which again, is like the Federal Reserve in the way I view it; it is in the Government, a public entity, no doubt about it—you might want to have the Chairperson of that organization or agency required to appear before the Congress from time to time so that you do have Congressional oversight in terms of the operation of the agency. That would be one way to go.

Another way might be to give additional powers to the National Transportation Safety Board, although they don't want them.

But, Mr. Chairman, we were trying to be very cautious about the notion that we don't want in any way, shape, or form to design any institutional arrangement which allowed any possibility of a degradation of safety as the number one consideration.

Mr. MINETA. You described that inherent conflict between regulating the Air Traffic Control System and operating it, and you say that it's a cause for serious concern.

Are there examples or actual situations that the Commission came across that prompted this concern? Or are you just seeing this as a potential future issue as air traffic demand increases?

Mr. ALBERTINE. That's an excellent question, Mr. Chairman. In my speech to the Press Club when we released the report I spoke directly to that question.

We have seen no examples whatsoever of any reduction in concern for safety, any action taken by any Administrator that in any way, shape, or form made safety a number two priority to some other programmatic or budgetary consideration. What we were talking about there was an attempt to try to offer what we thought was a constructive insight relative to good public policy.

It's probably not a good idea to design an institutional arrangement which potentially puts a person in a situation with that kind of conflict, and that's why we made that statement.

Again, there may be other ways to overcome that issue and maybe the issue of Congressional oversight is one way.

Mr. MINETA. With respect to the problems that are resulting from the high level of turnover in the Administrator position and your proposal for a tenured Administrator, what do we do if we have someone who has a number of years left, and they really aren't providing the kind of leadership that we feel that they ought to be bringing to the job?

Mr. ALBERTINE. In the case that we talked about, the Administrator is subject to removal by the board.

And also, let me make one final point. As you know, Mr. Chairman—and I don't want to get into any specific examples of this—from time to time, on a bipartisan basis, every President has appointed a person in a high level position that most people in the country think should be removed, and he or she doesn't wind up being removed, even though they have no fixed term. So it's not a problem that relates just to fixed terms.

Mr. MINETA. Do you have any comment on the internal reforms that have been announced by the Secretary of Transportation's task force in April, or the more recent establishment of the four Executive Directors at the FAA? And should these reforms be seen as something significant?

Mr. ALBERTINE. I think they are helpful, Mr. Chairman. I don't think there's any question about that. I do agree with Secretary Burnley that it's very difficult—not impossible, but I think difficult—to make that kind of piecemeal improvement. That's one way to go, but I really do believe that organizations need to get shaken up from time to time, and I think that this is a great time in the history of this industry for this organization to really get shaken up. I think that a dramatic change, a new departure, an innovative and creative approach is far better.

Mr. MINETA. Very well. Thank you very much, Doctor.

Mr. Gingrich?

Mr. GINGRICH. Thank you very much again, Dr. Albertine.

I was reviewing your earlier testimony with interest. I have a series of questions I would like to ask you about things in your testimony, and then maybe if we have time, pursue a couple more issues.

Mr. ALBERTINE. Yes, sir.

Mr. GINGRICH. On page 4 you talked about the need to, in effect, upgrade the standards for commuter aircraft and operations. In effect, are you suggesting that we look at merging Parts 135, 121, and 25?

Mr. ALBERTINE. Yes.

Mr. GINGRICH. You would now have a single standard in that sense for——

Mr. ALBERTINE. That's the idea, phased in over time.

Mr. GINGRICH. I see. So you would see FAA beginning some kind of rulemaking and asking for recommendations and comments on the merging?

Mr. ALBERTINE. Right. Yes, sir.

Mr. GINGRICH. Have you had any kind of reaction from the FAA to that proposal?

Mr. ALBERTINE. No, interestingly enough, we have not.

Mr. GINGRICH. Second, on page 5, an area in which we have gotten a great deal of action from FAA, on the Mode-C question.

You say something here that I just want to clarify because I'm confident you didn't mean it: "Vertical boundaries begin at the ground and extend to the highest altitude used by aviation," in other words, from the ground to Mars. In fact, you don't tend to suggest that satellites and shuttles ought to have Mode-C, do you?

Mr. ALBERTINE. No.

Mr. GINGRICH. Okay. I just wanted to clarify that.

Mr. ALBERTINE. I must tell you, that line was written by a very clever and creative speech writer.

Mr. GINGRICH. I'm sure. [Laughter.]

I'm just trying to understand these things, because I recently had the FAA explain to me that something we had done that we thought was modest, they had literally carried out about nine miles farther than we had intended. And I didn't want them to read this and go back and decide that they should expand the Mode-C to the shuttle and all satellites.

Mr. ALBERTINE. You do have to be careful. Your point is well taken.

And by the way, let me not blame someone else. I am responsible for that; I should have been a little more diligent.

Mr. GINGRICH. No, no. You're following the Ronald Reagan rule; you meant to. [Laughter.]

On the same page for a second, as I think you know, the FAA is going to end up exempting experimental aviation and antique aircraft and gliders and things like that. Does that strike you as a relatively reasonable exemption?

Mr. ALBERTINE. Absolutely.

Mr. GINGRICH. Now, on the other hand, a number of private pilots feel very strongly that if they were allowed to fly at a very low level, they clearly would be out of the glide path and they wouldn't be anywhere near commercial aviation. Was the Commission convinced that the clutter problem on the scope, of having unidentified aircraft, is sufficiently great that it's simply intolerable?

Mr. ALBERTINE. Absolutely, on two levels. One is safety, and the other is simply efficiency.

Mr. GINGRICH. In this case you're suggesting that the efficiency of the Federal bureaucracy is more important than the efficiency of the private pilot?

Mr. ALBERTINE. Yes, absolutely. It is a safety issue. With respect to questions of people flying around in Montana, our view is that Government overregulates and undermines the whole credibility of the regulatory process. The other side is that if you have aircraft flying around where they appear on radar scopes, the altitude ought to be indicated.

Mr. GINGRICH. Okay.

On page 6 you talk about frequent turnover in the Office of the Administrator. How much of that has been a function of either policy disagreement or of exhaustion rather than—theoretically Reagan could have appointed somebody in 1981, and then you would have eight years.

Mr. ALBERTINE. I agree. No question, Congressman; there's no doubt about that, and I think that's one reason why we want to try to create an agency that is fun to run. If you talk to previous Administrators, an agency where you've got your hands tied behind your back relative to key issues is not an agency that's fun to run. It does exhaust people, I agree. It's very difficult to work your will—I think it was said publicly—it's very difficult to work your will if you're an Administrator of this agency as it's now constituted. And I think that is a factor.

Mr. GINGRICH. Now, you use fairly strong language. You talk about "decisive action." You talk about "major structural overhaul." You talked orally about how it's useful to have agencies really get shaken up occasionally.

I would like to challenge you just for a minute, because it seems from my perspective and my limited view of this as a history teacher—I'm not a pilot—first of all, taking the current agency, picking it up and moving it outside of DOT will simply allow the same culture, the same bureaucratic mindset to have a new technical address, but to not change at all. Why would that automatically change it?

Mr. ALBERTINE. I agree with that. I would not support, and I don't think any member of the Commission would support, just making the FAA independent. We're talking about creating a whole new entity, out from under the appropriations process, out from under OMB review, its own personnel rules, its own procurement rules——

Mr. GINGRICH. Well, are you also then suggesting the right to rehire? Not just to strike, but as you set up this new agency you're going to screen all the current people? Or are all the people who have current tenure under Civil Service laws in fact going to keep basically the same job at the same desk with the same telephone?

Mr. ALBERTINE. I think the answer is no, sir. The vision I have of this is that it is a new ball game. You have a board, which is the policy-making entity, with an Administrator who can go in and—again, to the extent to which the legislation is crafted for maximum flexibility, as I would support it—the Administrator is capable of going in like anybody who is running an entity and making changes and deciding who stays and who doesn't stay and all the rest.

Mr. GINGRICH. You would have personnel rules and procurement rules different than the current Federal system?

Mr. ALBERTINE. Absolutely.

Mr. GINGRICH. And in the absence of that, you think that we lose most of the advantage of—without that kind of substantial change, do we lose most of the advantage of reorganization?

Mr. ALBERTINE. No question. It seems to me that just taking the FAA out of DOT and leaving the process exactly where it is today doesn't, in my judgment, do a whole heck of a lot for you. We would not have supported it.

Mr. GINGRICH. Okay.

Now, Congressman Barton of Texas has a bill that moves a little differently than you towards a similar thing; that is, it's user-funded, it has a board, it has various people getting elected to it by some means we haven't quite sorted out yet, but you have so many from air transport and so many from private aviation and what have you. And they basically sell stock in the entity.

If you're going to go as you do on page 7 in this paragraph where it talks about "user-funded with user fees" and so forth, why not go to a private entity?

Mr. ALBERTINE. Because, Congressman, I think that was a concession to practical reality. I think that it doesn't add a whole bunch relative to the way the institution would operate, and it gives people an excuse to take shots at it and not move.

I think fundamentally, the maintenance of aviation safety is going to be seen by the American people as requiring a public entity. I don't see that selling the assets to the private sector does a whole heck of a lot for you. I think it just makes it impossible to get done up here.

Mr. GINGRICH. But on the other hand, you are in effect creating a quasi-public entity. It will not have Federal Civil Service rules. It will not have Federal procurement. The nine board members will be explicitly user-oriented, and it will be paid for by user fees.

Mr. ALBERTINE. Yes, no question about that.

Mr. GINGRICH. Okay.

Now, what would you do with the Trust Fund? Do we give it the Trust Fund as a sort of a wedding present?

Mr. ALBERTINE. Yes, I think the answer on that is—we didn't address that explicitly—that the Trust Fund would somehow be used in the transition to the new entity.

I must tell you that you all will probably decide——

Mr. GINGRICH. No, no. But we need your advice here and your counsel.

Mr. ALBERTINE. That's what I would do. I would use it for the transition.

Mr. GINGRICH. Would you have an inclination to require members of the board of governors to be pilots? How familiar should they be with aviation?

Mr. ALBERTINE. I think the answer is—we debated that one at great length, the question of whether or not we wanted to explicitly suggest that people out to be in the industry or ought not to be in the industry. There's no question in my mind that the members of the board ought to have a lot of technical competence. I don't know that I would explicitly say they have to be pilots, but certainly, you want people with a lot of technical competence.

Mr. GINGRICH. Your Commission unanimously concluded that the Nation's air transportation system is safe.

Mr. ALBERTINE. Yes.

Mr. GINGRICH. It also concluded that the system is inadequate to deal with the future.

Mr. ALBERTINE. Right.

Mr. GINGRICH. If we do nothing, when will we reach the crisis point where we will begin to see a deterioration in safety?

Mr. ALBERTINE. It's impossible to predict. The other side of that, my view is that I wouldn't want to be flying around in the mid-1990's. I think frankly that you would have a real problem of deterioration of safety.

By the way, I would also say this. I think it's inevitable.

Mr. GINGRICH. The deterioration?

Mr. ALBERTINE. The deterioration.

Mr. GINGRICH. So even if we start the changes now we are already behind the curve?

Mr. ALBERTINE. There's no doubt about it. That's why I think you all should move this year.

Mr. GINGRICH. The Commission suggested the creation of a new Director of Aviation Safety, or a Safety Czar. I have to tell you my bias and then you can tell me why you would not agree.

My bias is that we are far better off to literally divide the functions, that the air traffic control function is an operational function and ought to be watched by the other half, if you will, on a safety basis. But I gather you all explicitly rejected that?

Mr. ALBERTINE. Yes. You know, Congressman, you and I have talked about that. We've talked about it privately; I don't know as we've ever talked about it publicly, so we should probably talk about it publicly.

I must tell you that my first go-round on that one was to be supportive of it. I thought it was a good idea from a conceptual point of view. The more I thought about it, however, and the more I looked at it—there are two issues here. One is the issue of how in the world that gets managed, and I think it is a managerial nightmare. You will really think that you have a two-headed monster. It's hard to see how it really works effectively in practice.

But there's a second issue. I debated someone the other day at the Cato Institute, about a month ago or six weeks ago, and it was in that debate when I really started to think, from a public policy point of view, about what you have if you do that. I must tell you, Congressman, I think what you have is a smaller FAA inside DOT, really running the show. I mean, I don't know that you've really gotten out the air traffic control from a practical, political point of view. The people who have the power are still going to be inside DOT, inside the Federal Government, and I think they're going to run the show.

So from both a practical management point of view and from a theoretical public administration point of view I don't think it's as good an idea as taking the entire agency out.

Mr. GINGRICH. Some people call for the elimination of the statutory directive of the FAA to encourage the development of air commerce. Would that elimination have any practical effect, in your judgment?

Mr. ALBERTINE. No, I don't think it would. But I must tell you on that one, if I were the Administrator of the FAA I would support that because I just think they get beaten over the head all the time on that issue. Again, if you spend time with the people in the FAA, as you all do, there's just no question that safety is the paramount consideration with respect to that agency; and the fact that there's language relative to promoting aviation I don't think is terribly important.

I would agree with Secretary Burnley. I would give that function to the Department of Commerce or somebody else.

Mr. GINGRICH. In its testimony, the General Accounting Office stated that the bulk of the delays in the National Airspace System Plan are related to FAA underestimating the complexity of the system, the time needed to develop the software, and the interdependencies among the different systems. The GAO concluded that "exemptions from the Federal procurement rules would, therefore, not solve the FAA's procurement problems."

Do you share the GAO's assessment of the reasons for the NAS Plan delays?

Mr. ALBERTINE. No. I think the fundamental reason has to do with the cumbersome, inflexible nature of those procurement rules. I think again, on both levels—both from the point of view of better, more efficient procurement procedures and from the point of view of shaking up the agency—putting it into a new authority is a good idea.

Mr. GINGRICH. Recently FAA began a reorganization in which power will be taken away from the Regional Directors and centralized in Washington.

Mr. ALBERTINE. I agree with that.

Mr. GINGRICH. You think that's a good idea?

Mr. ALBERTINE. Absolutely.

Mr. GINGRICH. Are you concerned that any major restructuring of FAA could involve an interim period of adjustment and upheaval that could be detrimental to aviation safety?

Mr. ALBERTINE. Sure. There's no question about it. Any time you're talking about making the kinds of changes we're recommending, that is an issue. It has to be managed carefully and properly. In my judgment, there has to be—you talked about the Trust Fund—there's no question there needs to be a phase-in.

You know, I think a lot about institutions that exist in one form, and you try to develop it into a new institution. Let me tell you that when you do that, you've got to do it very carefully, very cautiously, and you've got to take your time doing it. There's no question about that.

Mr. GINGRICH. Recent reports indicate the number of near midair collisions and operational errors has begun to decline. What, if anything, does this say about the safety of the system and the kind of job FAA is doing?

Mr. ALBERTINE. FAA is doing a great job with respect to maintenance. The system is safe; there's no question about it. The problem is that from a technological point of view they're falling behind. We argue that in the future it might not be safe, but there's no question but that flying is extraordinarily safe, extraordinarily more safe, frankly, than probably walking around.

If you get on an airplane, the most dangerous thing that occurs on an airplane is if you happen to be on one that flies more than two hours and you inhale smoke. It's a very safe system, but it's a system from which the American people demand an extraordinary amount of safety.

Mr. GINGRICH. Finally, FAA safety inspections currently tend to focus on the paper—that is, the airlines' maintenance records. Do you think these inspections should focus more on the hardware, or is that impractical?

Mr. ALBERTINE. Yes. Yes. I think an audit function is—I understand that; and frankly, again, in any organization which is large, you need to follow the paper trail. That's one device for ensuring that standards are being met. But frankly, I think the white gloves test is a terrific idea, and more of that ought to be done.

Mr. GINGRICH. Thank you very much.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Chairman, people are saying, take the FAA out from under DOT, but unless we do a lot of other things, revise Civil Service rules, revise the budget process, revise the procurement policy, just taking it out from under DOT and making it an independent agency in itself isn't going to solve some of the problems.

Mr. ALBERTINE. I agree with that, Mr. Chairman, and our Commission agrees with that.

Mr. MINETA. And it may be more difficult to get, let's say, the Senate Government Affairs Committee or the House Post Office and Civil Service Committee to make some of those Civil Service rules changes that would allow enough flexibility to be able to do the kinds of things that we need to get air traffic controllers to high-cost areas, to get better procurement procedures.

Mr. ALBERTINE. I understand the point, Mr. Chairman.

Mr. MINETA. Suppose, since we're talking about micromanagement by the DOT as part of the problem of the FAA, it seems to me what we have are policy people in the Office of the Secretary of Transportation—Assistant Secretary for Budget, Assistant Secretary for Administration, Assistant Secretary for Policy and International Aviation Policy. We've got the FAA here, and we've got all these Assistant Secretaries looking over their shoulders.

Suppose we make that FAA an Assistant Secretary of Transportation for Aviation, bring them up to that level so that you don't have this body of people overlooking every decision made by the FAA, so that they're right up at that same level and reporting directly to the Secretary of Transportation? They then don't have to have their budget go through the Assistant Secretary of Transportation. They don't have to go through the Assistant Secretary for Administration. They don't have to go through the Assistant Secretary for International Aviation Policy, but that they would be elevated to that point so that we don't have to have all these "policy types" looking over them.

I was wondering, just offhand, whether or not something like that might work rather than pulling the FAA out from under the Department of Transportation totally?

Mr. ALBERTINE. Mr. Chairman, I think off the top of my head that that probably would be an improvement in the organizational structure of the agency, but I guess what I would focus your attention on is the following.

Suppose the Congress, which has the power to print money, had created the Federal Reserve and had put it in the Department of Treasury so that you had a situation where the Chairman of the Federal Reserve Board was, in effect, an Assistant Secretary of the Treasury, which is technically what his rank is in terms of protocol. There would probably be arguments on the question of the micromanagement of the regulation of the banking system and the rate of growth of the money aggregates and all the rest by the Secretary of the Treasury, and there are probably devices which could be constructed which would reduce that micromanagement. But in my view, it would not be as good a model as having the Federal Reserve out here, really quasi-independent, looking at a very technical area of what the appropriate rate of growth of money aggregates is—very technical, trying to make those decisions as much insulated as possible from so-called political pressure.

I think that is the way we ought to think about the FAA, in my judgment. It ought to be out here on its own making highly technical decisions, pretty much insulated from the sort of normal, day-to-day political pressure you have in Washington, with accountability.

So again, Mr. Chairman, I guess if I——

Mr. MINETA. Let me stop you there. Where is that accountability?

Mr. ALBERTINE. Well, again, we tried to achieve that objective with this Director of Aviation Safety. Maybe that's not the best way. Maybe the best way, Mr. Chairman, is to make the Administrator of the Federal Aviation Authority in our model come to the Congress in the way the Chairman of the Federal Reserve Board has to come to the Congress, and periodically report to the Congress about his agency. You know, the Banking Committees, in 1974—the Congress now requires the Chairman of the Federal Reserve to come before the Banking Committees and give the banking committees his targets or her targets relative to the rate of growth of the money aggregates, and I frankly think that has improved the operation of the Federal Reserve. It has given the Congress a little bit of oversight that it didn't have before, but at the same time the Congress doesn't try to manage, and neither does the Secretary of the Treasury, the day-to-day operation and control of the money system.

The reason why the model works is because, frankly, sometimes you have to do things if you're at the Federal Reserve, as you know, Mr. Chairman, that are not terribly politically popular. Fighting inflation and causing interest rates to rise may be necessary but not terribly politically popular. And that insulation is useful.

EPA is another example of that, frankly. EPA often does things that are not terribly popular up here on the Hill but may very well be necessary. So I think that kind of independence is helpful.

The other point I was going to make, Mr. Chairman——

Mr. MINETA. Is the Federal Reserve Board a regulator?

Mr. ALBERTINE. Yes, sir. It regulates the rate of growth of the money supply and it regulates the banking industry. Its sole function is regulatory.

Mr. MINETA. I guess the thing I'm thinking about, by setting it up as an independent agency is to what extent does it become a captive of the industry itself?

Mr. ALBERTINE. Well, I think that's a danger. I think that was what people thought about the Federal Reserve. But I think the way to try to get at that issue is either a Director of Aviation Safety who is appointed by the President, highly visible, terribly accountable in terms of the public process, or have the Administrator come to the Congress.

And I think second, in our scheme of things, we have five members of this nine-member board that are from the public sector. Maybe you want to make that seven out of nine or maybe you want to make it nine out of nine.

The other point I want to make is this. In our model, there's no question that we know how this would work. The Secretary of Transportation, whether it's President Dukakis or President Bush or President somebody else, the Secretary of Transportation is going to walk into the Oval Office with the Chief of Staff of the White House and say, "Here's our list of people who we think ought to be the Administrator of this agency, ought to be on the board."

Again, to get back to Congressman Gingrich's point, that's probably why you don't want to have it privatized, because from a symbolic point of view it's very clear that this is in the public sector and is publicly accountable.

I think there are a number of safeguards with respect to public accountability, just as there are with respect to the Federal Reserve Board. The Chairman of the Federal Reserve Board is a person who is appointed by the President after an awful lot of scrutiny and care, and a lot of scrutiny and care in terms of confirmation in the Senate.

One point I was going to make, Mr. Chairman, if I may be so impertinent, it seems to me that having watched you operate, the kinds of solutions that I would expect from the Chairman relative to this series of problems would be a solution which was more than just tinkering with the process, really, an innovative and creative and visionary solution, the kind of solution that occurred in 1913. [Laughter.]

Mr. MINETA. Okay. Well, thank you very much—

Mr. GINGRICH. Could I say just one thing for the record?

Mr. MINETA. Certainly.

Mr. GINGRICH. I want to commend our friend, Jack Albertine. When you were first appointed you really set out, I think, in sitting down with your Commission to try to go to the heart of this. We don't agree on all the details, but I think you clearly made the right general leap, and you are forcing the whole system in the country, not just in the Congress, to face some very tough questions. And I think you see it in part in the reaction of the Secretary of Transportation. There is a debate that is beginning to develop here that I think is very healthy, and I think your Commission is a significant factor. I think we owe you some thanks on our side for the time you and your colleagues have put into making this possible.

So I just want to thank you.

Mr. ALBERTINE. Thank you.

Mr. MINETA. I'd like to echo those thoughts, as well.

I know that we will continue to call on you for advice and to bounce ideas off of you and your colleagues on the Commission. So again, we really do appreciate your responsiveness.

Mr. Inhofe?

Mr. INHOFE. Just one last question.

When we were first asking questions I asked for an evaluation of those bills that seemed to be most prominent, floating around today. If you have any resources where you could go into those and make some comments about them, it might be beneficial.

Mr. ALBERTINE. Congressman, I'll do it on my own. Between visits to underwear plants I'll take a look at those bills and get back with you on it.

Mr. INHOFE. That's great. Thank you.

Mr. MINETA. Again, thank you very, very much, Doctor. We appreciate it very much.

[Mr. Albertine's prepared statement follows:]

PRESIDENT'S COMMISSION ON AVIATION SAFETY TESTIMONY BY DR. JOHN M. ALBERTINE, CHAIRMAN

Air transportation has changed dramatically in the past decade. Airline deregulation dismantled the economic regulations that had shaped the industry since the 1920s and replaced them with free market forces. Increased competition lowered fares, expanded service, and brought air travel to millions of Americans who had not previously been able to afford to fly. Last year in scheduled domestic service alone, an average of 13 people boarded an airplane every second of every minute of every hour of every single day of the year. Before deregulation, that number was only eight.

Along with deregulation's benefits has come increasing concern that, perhaps, air transportation is less safe than before. Perhaps, the "margin of safety" has eroded. Perhaps the airlines are cutting corners on maintenance. Perhaps, the air traffic control system cannot handle the high volumes of traffic in the aftermath of the PATCO strike. Perhaps, the long lines of planes waiting to take off and land are an indication that there is something wrong somewhere. Perhaps, the FAA is not equipped to keep the skies safe in a deregulated environment.

The President's Commission on Aviation Safety was created by Congress to examine these questions and to seek ways to improve aviation safety. We began our work last June and since then we have held public hearings and traveled around the country extensively talking to hundreds of aviation experts and visiting dozens of facilities.

We began our work with no preconceived assumptions, no intention of defending special interests, and no advocacy for jurisdictional claims. Our deliberations have been marked by frank and open exchanges of views in an atmosphere of cooperation and mutual respect. I want to commend each member of the Commission—John Byington, Joe Kalt, Mike Levine, Russ Meyer, John Robson, and Tom Wathen—for his hard work and important contributions to our report. I also want to commend the staff and the consultants for their untiring efforts. These are complicated issues and our task has not been easy. Aviation safety is, after all, an issue about which reasonable and well-intentioned people with the same goals can have honest differences of opinion. However, no one involved in this effort, even for a moment, has lost sight of our overriding goal of improving aviation safety. As a result, I'm pleased to announce that every single one of the President's Commission on Aviation Safety's conclusions and recommendations has the unanimous support of all seven commissioners.

After months of study, hearings, meetings, and staff analysis, the President's Commission on Aviation Safety concludees that the Nation's air transportation system is safe . . . for now. However, that safety is being maintained to an increasing extent through delays and througfh what I can only characterize as "heroic" efforts of air traffic controllers, airways facilities technicians, safety inspectors, and other FAA personnel.

A recent poll conductd by the Atlanta Journal-Constitution found that two-thirds of the Nations commercial pilots believe airline deregulation has made flying more dangerous. We have examined the record and found that, to the contrary, the industry's safety record following deregulation has been far better than before. We do not need to give back deregulation's benefits to enjoy safe air travel. However, deregulation has brought rapid growth and change in the industry that has made the FAA's job much more difficult. The challenges to maintaining aviation safety are greater than ever before. If we are to maintain a safe system today and improve its safety in the future, changes will have to be made, and they have to be made quickly. There are serious problems to be solved.

Our report contains 15 recommendations for change that we believe are needed to make the Nation's aviation system more safe. I am submitting volume I of our report for the record. Volume I contains the final report and recommendations of the Aviation Safety Commission. Today in my remarks, I will focus on only four of these recommendations: increased safety inspections, tighter regulations for commuter airlines, Mode C transponders for general aviation aircraft, and creating an independent federal aviation authority.

SAFETY INSPECTIONS

Safe airline travel depends on the airlines' maintenance programs and on oversight and surveillance by FAA safety inspectors.

The FAA currently relies on scheduled inspections on each airline's operations and maintenance functions by a handful of inspectors assigned to specialize in a particular airline. From time to time, the FAA has conducted in-depth inspections, where a team of as many as 30 inspectors examine a carrier's operations and maintenance in great detail for as much as a month of intense study.

These in-depth inspections detect different sorts of problems than the on-going inspections by inspectors permanently assigned to the carrier. Outside inspectors provide a "fresh set of eyes" and the potential complacency of the inspector workforce is lessened in an environment of periodic outside inspections. The in-depth inspections have consistently uncovered problems that had been missed by the on-going inspection program at the local office, or for which the local office had not taken corrective action. While recent FAA administrators have supported in-depth inspections on a year to year basis, the FAA has not yet committed to a permanent in-depth inspection program.

Both the regular inspections and the in-depth inspections are pre-announced to the airlines. On those rare occasions when FAA has conducted unannounced inspections, far more violations and unsafe practices were observed on these inspections than when prior notice was given.

We recommend that the FAA institute an expanded safety inspection program that includes many more safety inspectors, a permanent program of national periodic in-depth inspections, and surprise inspections as needed to keep day-to-day operations in conformance with safety regulations. We are recommending a comprehensive audit program of the airlines maintenance and operations programs that focuses on the systems the carriers have in place to ensure safe operations and maintanance. Such a program requires a balance of all three types of inspections—regular, in-depth, and surprise—rather than a reliance on just one type of inspection.

These changes to the inspection program are critical to maintaining safety, but in a deregulated environment they are not enough. The airlines' ability to expand and adjust their operations to the market is one of the major factors in deregulation's benefits to travelers. However, rapid change through growth, contraction, new ownership, merger, and so forth, can make it difficult to keep tight control of operations and maintenance. In view of the stresses these changes may produce, we further recommend that the enlarged inspection program give priority—perhaps in the form of special in-depth inspections—to examining carriers undergoing major change.

Critics of these recommendations may charge that such an enlarged program will be too expensive and that in-depth and surprise inspections could easily turn into "witch hunts" in which minor problems are blown out of proportion. We believe the added cost is not too high a price to pay for increased safety and we are confident that the professionalism of the FAA safety inspectors will keep these activities properly focused.

COMMUTER AIRLINE SAFETY

The commuter airline industry is the backbone of airline service to small communities. Commuter safety has been a concern for some time and the commuter industry as a whole has experienced considerable improvements in safety since the FAA tightened commuter safety standards in 1978. Moreover, some commuter carriers operate extremely safe operations—every bit as safe as large jet carriers. However, some segments of the commuter industry are not as safe as they could be and as a result, commuter air travel, on the whole, remains more risky than jet air travel.

One apparent reason why some commuter carriers operate more safely is that many of the aircraft these carriers fly seat 30 or more passengers and must meet the higher performance standards of air transport category aircraft and use operating procedures much more in line with those of large jet carriers. We believe further improvements in safety might be achieved by tightening regulations for the types of aircraft and the operating procedures commuters must use.

We believe that air travelers going to and from small communities should not face higher risks than those traveling between large cities. We therefore recommend that the FAA move toward uniformity of equipment and operating practice standards for scheduled passenger service, whether it be provided in large jet or small commuter aircraft. Safety regulation should reduce and eventually eliminate differences in operating and aircraft standards, moving toward the standard of regulations for air transport category aircraft.

Some may argue that small aircraft meeting these standards do not exist and these tightened standards would put some commuter airlines out of business with a resulting loss of service to small communities. We believe that with a phase-in period, aircraft with fewer seats can be developed to meet air transport category aircraft standards without substantially higher costs.

GENERAL AVIATION

The public concern about general aviation aircraft stems mostly from the perceived risk to commercial airliners of midair collision with general aviation aircraft. While such risks have been quite small in the past, we all recall the tragic accident in 1986 when an AeroMexico DC-9 collided with a four-seat Piper Archer over Cerritos, California.

General aviation aircraft figure prominently in near midair collisions. For example, during the period 1985 through 1987, there were over 1,000 near midair collisions involving an air carrier reported to the FAA of which over 70 percent involved a general aviation aircraft. Moreover, reports of near midair collisions between air carriers and general aviation aircraft more than doubled between 1985 and 1987. In the Atlanta Journal-Constitution survey I mentioned earleir, half the commercial pilots surveyed said they had been involved in a near midair collision.

To prevent two aircraft from colliding, two things must happen in the air traffic control system: First, the controller must know where both aircraft are, including their altitude, and second, the controller must be in communication with at least one of the aircraft so that the appropriate instructions to change altitude or direction can be given.

Aircraft operated by the airlines are all equipped with the so-called Mode C transponders that report the altitude to the controller and jet carriers and commuters are all in constant contact with controllers. Some general aviation aircraft, however, are not equipped with, or do not use, Mode C transponders so that controllers cannot know their altitude for sure. Without Mode C, a controller cannot tell the difference between a general aviation aircraft that poses a collision threat to another aircraft and one that is several thousand feet above or below and thus poses no threat. It's as if the controller is forced to wear blinders.

The President's Commission on Aviation Safety has concluded that safety could be improved while, at the same time, reducing air traffic controller work load during busy periods, if altitude information were available to a controller for all aircraft appearing on the controller's radar screen.

Therefore, the President's Commission on Aviation Safety recommends that the FAA should designate around all large, medium, and small hubs, buffer zones marked by clearly identifiable geographic or navigational landmarks and whose vertical boundaries begin at the ground and extend to the highest altitude used by aviation—in other words, from the ground to Mars. The area for the buffer zones must be at least as large as that covered on the radar scopes in the terminal area radar control centers. Our goal is to let the controllers take off the blinders. If the aircraft appears on the controllers' screens, the controllers should know the altitude of that aircraft immediately. Any aircraft that enters a buffer zone must have an operating Mode C transponder.

For this recommendation to work, no aircraft or user should be exempt from the buffer zone regulations and Mode C transponders should be inspected annually. This recommendation does not require that more aircraft be brought under positive air traffic control. Rather, the recommendation is intended to provide more information to the controllers to make it easier for them to keep aircraft apart.

FEDERAL AVIATION AUTHORITY

The first three recommendations I've discussed are directed at specific problems, as are most of the other recommendations in our report. There is, however, a more fundamental underlying problem with aviation safety in the U.S. We have concluded that the present safety regulatory structure is simply inadequate to deal with future growth and technological change.

The aviation system reaches every corner of our country, yet the FAA's personnel system does not provide cost-of-living pay differentials to allow FAA to move controllers, technicians, or safety inspectors to where they are most needed. Thus, facilities in high cost-of-living areas are often severely understaffed while other facilities have all the help they need. Moreover, for some technical specialities, FAA salaries are not competitive with the private sector. What makes it worse is that we are facing severe hiring needs. In the centers we visited, about 20 percent of our airways facilities technicians—the dedicated professionals who maintain our air traffic control hardware—are eligible for retirement today and could be gone tomorrow.

The FAA operates in a technologically complex environment, yet as Jim Burnley said in a speech to the National Press Club in February," . . . if every step in the [procurement] process is carried out perfectly, . . . high-tech systems may be technological relics by the time they are actually installed." One result of this procurement system is that the FAA uses communications equipment in its air traffic control centers that is so old that the insulation on the wires is too brittle to allow it to be moved.

Even if you could find piecemeal solutions to these personnel and procurement problems, the FAA would still face severe problems. The Federal budget process has grown so contentions and drawn out in recent years that the FAA faces nearly perpetual uncertainty about the resources available to it. Budget by "continuing resolution" is no way to run an agency with a mission as critical as the FAA's.

Frequency turnover in the Office of the Administrator is another serious problem. Many people talk about the short terms of some administrators, but even the longest term we've had for an FAA Administrator is nearly three years shorter than the term of the St. Lawrence Seaway Administrator.

When an Administrator is appointed, he faces a potentially difficult conflict. The Administrator is responsible for operating the air traffic control system and also for setting the standards to which it must adhere. In essence we force the Administrator to be his own regulator. It's a testimony to the integrity of the men who have held the job that we have not yet seen safety degraded by this conflict, but a system in which such conflict is inherent is cause for serious concern.

We can no longer tolerate these problems. Now is the time to equip the regulatory system to accommodate changes in the numbers and kinds of aircraft, to take advantage of new technology in aircraft design and manufacture, to respond to heightened sensitivity on the part of the public to aviation safety, and to act on the potentially worthwhile safety improvements that have been languishing in the backwater of a bureaucratic swamp of diffused authority and accountability. In short, now is the time for decisive action by Congress and the executive branch.

We believe that the Federal Government must continue to play the central role in ensuring safe operation of the U.S. aviation system. We believe that the regulatory process must remain governmental in character and should not be taken out of the Federal Government or removed from public accountability. While the system is safe for now, the present governmental structure is not working effectively enough to ensure safety in the future. Therefore, we agree unanimously that a major structural overhaul is essential.

Specifically, the President's Commission on Aviation Safety recommends that FAA be transferred from the Department of Transportation and be established as an independent Federal aviation authority. The authority would be managed by an administrator who is appointed by the President and confirmed by the Senate for a term of seven years.

The authority would have a director of aviation safety—in effect a "safety czar"—whose sole responsibility would be to ensure the safety of the system. This safety czar would also be appointed by the President and confirmed by the Senate for a term or seven years. The Administrator would promulgate regulations with full notice and hearings, as at present. The safety czar would participate in this process. However, the "safety czar" has the authority to disapprove regulations promulgated by the Administrator if they are felt to be unwarranted. The "safety czar" also has the authority to initiate rulemaking, again with full notice and hearings, if he or she feels the Administrator is not acting fast enough on an issue.

If there is a disagreement between the Administrator and the "safety czar", the safety czar's decisions are appealable to a safety committee composed of the Administrator, the "safety czar", the Secretary of Transportation, the Secretary of Defense and a public member appointed by the President and confirmed by the Senate for a term of four years.

The Federal aviation authority would be user funded with user fees set by a board of governors consisting of the five-member safety committee plus four other public members selected with input from user groups to ensure that both the operations and user fee structure balance the needs of the aviation system. User fees would be set, of course, only after full public hearings with input from various Government agencies. The authority would also be free to tailor its personnel and procurement systems to the unique needs of aviation safety.

This proposal for a Federal aviation authority addresses the FAA's current problems of, to use the words of Secretary of Transportation Jim Burnley, "rigid personnel rules," "abstruse procurement rules," and "uncertainties of the Federal appropriations process." This proposal alleviates these problems, as well as others, in a way that provides for more rather than less accountability to the public interest.

With the safety czar, the Administrator is not the sole initiator of safety regulations or enforcement actions. The safety czar's sole responsibility is ensuring system safety. The safety czar is also held accountable through the appeals process to the safety committee. This arrangement holds a single person accountable for the safety of this system while still providing the potential for collegial judgment to overturn that person's actions if they are ill-advised. At the same time, this arrangement avoids any potential problems of day-to-day action faced by collegial regulatory bodies because the safety committee serves solely an appellate function, and is expected to be called upon only in unusual circumstances.

NTSB Chairman Jim Burnett has testified that, ". . . DOT has, on occasion, provided the pressure needed to get significant safety board recommendations implemented—recommendations that, based on FAA resistance, would be languishing still without the Secretary's interference."

Under the Federal aviation authority proposal, the potential benefits of having the Secretary of Transportation expedite FAA action are retained. The Secretary of Transportation, or other members of the board of governors, can urge the safety czar to disapprove an unwise action by the Administrator or to take action in the face of unwise inaction by the Administrator.

Safety should further be enhanced by having the safety czar serve a "watchdog" function for ensuring that air traffic control operations are safe. Having an independently appointed official with no operational responsibility should ensure that no compromises with safety are made to accommodate other program or budgetary goals. The potential conflict for the Administrator in the current system is removed. Some argue the conflict from also be removed by separating air traffic control from regulation. We considered such an option, but we are not inclined to gamble in sorting out conflicting assertions about whether these functions can be separate without endangering safety nor can we endorse the proposition that air traffic control can be privatized.

In closing, let me emphasize that our overriding goal has been to develop recommendations to enhance safety now and to ensure a safe air transportation system in the future. We hope our work will contribute to a bipartisan agreement to ensure a safe air transportation system into the 21st century and we stand ready to help in any way we can. The problems we have found during our work are serious and the solutions we have proposed are viable. If we have ruffled some feathers with our recommendations, we make no apologies for there can be no substitute for the public safety.

Mr. **Mineta**. At this time I would like to call on the Honorable Najeeb Halaby, former Administrator of the Federal Aviation Administration, who is representing not only a number of organizations but also is here on behalf of his colleagues who did serve as Administrators of the Federal Aviation Administration.

Again, Mr. Halaby, we owe you a debt of gratitude for all the time and work you have spent on a voluntary basis looking out after aviation interests and safety. That is something foremost in your mind, I know.

Your statement will be made a part of the record, so please proceed in your own fashion.

TESTIMONY OF NAJEEB E. HALABY, ON BEHALF OF AIRCRAFT OWNERS AND PILOTS ASSOCIATION, AIRLINE PILOTS ASSOCIATION, AIRPORT OPERATORS COUNCIL INTERNATIONAL, AIR TRAFFIC CONTROL ASSOCIATION, AIR TRANSPORT ASSOCIATION, ALLIED PILOTS ASSOCIATION, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES, EXPERIMENTAL AIRCRAFT ASSOCIATION, GENERAL AVIATION MANUFACTURERS ASSOCIATION, HELICOPTER ASSOCIATION INTERNATIONAL, NATIONAL AERONAUTIC ASSOCIATION, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, AND REGIONAL AIRLINE ASSOCIATION

Mr. **Halaby**. Thank you very much, Mr. Chairman. I think the testimony by the Chairman of the Presidential Commission was extremely important; and as I listened I said to myself, what a tough job you as Chairman and you as members of this committee have. You've been presented with a devastating picture of organization and management of an absolutely crucial function of the United

States Government. This matter has been under study for three years, and it really compels action. As he said, and I know you are a disciple of creative and innovative solutions rather than little fixes for serious problems.

We have been told that "the foxes are circling the hen coop," that the Secretary needs a "cattle prod" to get his own people to do the right thing, that the FAA is a bunch of pilots who through their goggles don't see the problem of air safety as clearly as the passengers in the back of the airplane see it. You've been presented with a most challenging problem. And when the Secretary of Transportation, who has been there for at least five years, comes to you as the only Administration witness and says that the status quo is impossible and intolerable, it seems to me that you've got a record of public dissatisfaction that is most demanding of urgent action.

Mr. Burnley's diagnosis was quite devastating, from my point of view. He explained the "cattle prod" point, and it is true; all of us in any institution need a burr under the saddle—I prefer that a little bit to the cattle prod, because a cattle prod is prodding cattle and I don't think of the FAA people as cattle. I think of them as very decent, very dedicated, quite professional people.

We've been told that the agency is a lousy buyer. Well, that's certainly been true over the years; I found it so 25 years ago when I was there, and it hasn't been cured since. But now we're going to give, according to the GAO, $24 billion in the next 10 years to an agency that's a lousy buyer. Well, that's pretty devastating and demands a cure.

What's been happening lately is that we're adding another layer to the present organization, a kind of General Staff of Executive Directors, so the man that has to take the action in buying or in assigning personnel or in running the Air Traffic Control System has now several layers in FAA, and now a new one has been added; and on top of that, all of the layers in the Office of the Secretary of Transportation.

When I heard that the Assistant Secretary of Transportation for Federal Aviation wouldn't have to submit his budget to the other Assistant Secretaries in the Office of the Secretary of Transportation, I was amazed at that thought. Every one of the agencies within the Secretary of Transportation's ken has to submit to Administration, to Budget, to Finance, to the IG, etc. One of the problems here that those of us who long ago supported the idea of an integrated transportation policy wanted to see realized, namely, that we would get some highways to airways, that we would get some Metros to air terminals, because the Secretary could deal both with highways, mass transit, and FAA—none of that has happened. And the reason is that we've simply superimposed a department over an operating agency.

So I would urge that we get legislative action before, under the rather critical situation that's been presented to you, we get quick fixes.

I was quite interested in the Secretary's comparison to Amtrak, Mr. Chairman. The idea that air traffic control is a kind of seller of seats, as a commodity merchant, as a service seller, is so unsound in my view and my experience that I have to take strong exception to that thought. It may be that Amtrak is the nearest and most familiar analog familiar to the Secretary, but in terms of its function, the Air Traffic Control System is as different from running a railroad as I can imagine.

ATC is a regulated, enforceable collaboration between pilots and controllers. It's one of the most intimate collaborations that you can have. It's split second. It's on a matter of hundreds of feet and minutes that the system survives. And anybody who has been in one of those control centers, anybody who has been in the air as a pilot with a headphone knows that you cannot split rulemaking, funding, procurement, operation. You cannot disintegrate the FAA into parts and hope that they will counter or check and balance each other. That isn't the way the system is designed or the way the system works.

So the rulemaker and the controller must be alongside—they must work absolutely interactive, and there must be an accountable person on top of both of them. And when they get into conflict and the controllers resist innovation, resist new equipment, it's because they want to be doubly damn sure that it will work in every one of the situations that they can imagine. So the Administrator is always making tradeoffs between what the controllers say they can handle and what the engineers say they can provide. We haven't worked that out yet. And splitting up rulemaking, procurement, operation would make the problem much worse, in my judgment.

Today I am representing—without compensation—twelve organizations in the millions of members. Mr. Chairman, but I don't pretend to know all the answers, I do know that the FAA is a very unique operation. The analog with Federal Reserve sounds interesting; with Amtrak, it sounds much less interesting. But what we've got here is unique, a very unique function. It's 24 hours a day, seven days a week, in hundreds of places, civil and military. It is nationwide. It is involved in saving lives. It is also involved in ensuring the least injury and discomfort. And with the stroke of a pen the President can turn it over to the Department of Defense in an emergency.

It must, the GAO says, spend $24 billion in the next 12 years. It regulates airmen, airways. You've got to say that quite literally, no one can build an airplane, modify an airplane, maintain an airplane, or move an airplane without some FAA employee involved directly or indirectly. So you need a unique, autonomous operating entity, and I think that you can get one. But now is the time to do it. You've got all the data out; I don't think there are any new facts or ideas available. There are some combinations that could be improved, and I think that the committee is in a uniquely creative posture to come up with some action now, because I think public dissatisfaction is so high and the record before the committee is so persuasive of a change in the status quo—the most passionate testimony has been from the Secretary of Transportation—that what is needed is a legislative change that meets the challenges that you heard, and then we need some stability.

The idea of stability in an aircraft is that the thrust and the drag and the lift and all of the forces keep the airplane at the same altitude in the same flying condition. The FAA, in the more than 30 years that I've been trying to work with it, has been dynamically unstable. The funding has been up and down with crises and crashes. The pressures have been first from the left and then from the right. Secretaries every 3 years, Administrators every 2 years! The appointments have been high quality and low quality. And more recently, the intrusions of the political hand into the professional operation have been quite serious.

I was appointed to a Presidential Commission by President Eisenhower, and we examined the role of the CAA and the Department of Commerce, just 32 years ago. You can almost hear a record playing of what happened to the CAA under the Secretary of Commerce about funding, procurement, personnel, etc. That Commission recommended that there be an independent agency, and President Eisenhower and the Congress produced it. For several years you had an independent—and I think dynamic—operating organization.

I think we can return to that, having learned the lessons of the past few years. I hope fervently, Mr. Chairman and fellow members, that you could act now to move forward with the Senate on a bill that would return us to dynamic stability.

Thank you.

Mr. MINETA. Thank you very much, Mr. Halaby.

We have a call of the House at the present time, so I'll recess and then we'll get into the question and answer period on our return.

[Recess.]

Mr. MINETA. The subcommittee will come to order.

Since you were rudely interrupted, Mr. Halaby, is there anything further you would like to say before getting into the question and answer period?

Mr. HALABY. Just one thing that I would like to mention is that when you've got 12 associations like this together on any issue, you have somewhere between a miracle and a huge mystery.

They are usually up here lobbying, very often for conflicting points of view, and I have never found them united on anything before. That's because of the dynamic nature of this industry and the fiercely competitive interests that are involved. But I do think it's important to realize that these 12 associations, and perhaps others who may join them in the future, are here not because they are representing special interests but the general interest of the whole aviation community. Their members are literally in the millions, and they cover the whole spectrum from inventors to engineers to controllers and other Federal employees, manufacturers, mechanics, pilots—commercial air carrier as well as corporate and private pilots—and airport and airline executives. They really build the tax base underneath the whole industry, and they and the three out of four Americans who are now flying—when we first met, Mr. Chairman, I guess it was about one out of ten—they pay the taxes. And those taxes were nailed on them for airway and airport modernization and improvement.

I think, as I believe you think, they have a legitimate complaint that they've been betrayed. So they come together in response to your call, and I think they have composed their differing views into one coalition.

I don't think we're here because we're seeking a friendly FAA. For most of us, as pilots or mechanics, there's never going to be a friendly FAA. The FAA is going to be a regulator, and we're the regulated. That's the way it was, that's the way it is, and that's the way it should continue to be.

But we want an effective FAA, not a friendly one. We just don't think it's as effective as its own people would like it to be and as I know you gentlemen would like it to be.

So we think, these 12 associations here—and fortunately, my own personal views comport with theirs, so it's easy to speak for them—they really are dependent on the public. If they don't attract the public to our causes just as if you don't attract the public to your cause, we won't continue.

So we want, as I say, a professional FAA with the right people in the right places. We want modern management, capable of adjusting to this workload.

I'm sure that the controllers are going to talk to you. I'm so glad that you have some practitioners as well as theoreticians about this problem. The guys right out of the towers and out of the maintenance line—I think you're going to find that they want that modern technology, but they don't get it. They want it purchased sooner and quicker. As tax users, they want those tax dollars better used so that they don't have the complaints from people depending on the system.

I've heard pilots on the air say, "Why can't you give me traffic advisories? I'm paying taxes on it." You know just a little hot obiter dictum, as they say in the law.

But as you particularly know, Mr. Inhofe, there are all kinds of little comments back and forth on the system these days when each passenger is paying the tax and each pilot is paying that eight cents a gallon.

So I think we would rather have a tough commander in the command role with all of the checks and balances that are on him than some remote passing political appointee doing this regulation.

Now, there has been a lot of discussion about the conflict between promotion and regulation. Frankly, I didn't find that conflict. Long ago, different era, etc., I know, but I don't think the FAA would be harmed if you limit its role in the nonregulatory area to something like this. It should be authorized and directed to promote safety by establishing and administering an accident prevention program; by encouraging airport development; by educating the public on the importance of the safety and efficiency of aeronautics; and by encouraging and assisting in the adoption of worldwide safety standards.

Now, that would rule out buying a supersonic transport or a tiltwing rotary aircraft, or that direct promotion of aeronautics. To me, you would still preserve the essential role of the FAA in the nonregulatory area and shed this perception of conflict.

But I was fascinated when the five gentlemen could not come up with a good example of how promotion was compromising regulation.

That was all I wanted to add, sir.

Mr. MINETA. We've seen overall increases in recent years in FAA funding. As an example, the President's fiscal year 1989 budget proposes a 13 percent increase over 1988.

Your testimony indicates that we need a better means of assuring that funding is reasonably consistent with the demands that are placed on the agency. How much are we short when we examine the demands? Is there a way to quantify that?

Mr. HALABY. I think you're referring to whether the budget is adequate or not, and the impact of cuts.

I would be even more presumptuous than usual, Mr. Chairman, to answer that question. I have the feeling that with regard to all Government budgets, there is waste involved, and that it results from the way we buy and the way we pay. So I've no doubt that here and there funds could be pared, and I'm sure they will be pared down.

But what I'm pleading for is stability in the funding. When you hear how long it took to buy this obsolescent mainframe computer, you really cry a little because if it took that long to put out the RFP's, get all the proposals in, go through all the clearances within FAA and DOT, and then you finally buy it and it's last year's crop of kisses, you just say, "This isn't the way we should be dealing with the modernization of the airspace, this priceless asset we have."

So I would say that I would trust the Administrator and his staff with the kind of advisory council that has been proposed to review his policies and his programs, with the kind of review that's going to take place in the OMB, with respect to the non-Trust Fund portion of the funding; that is, the amount attributable to national security, military operations, and public safety. That's going to go through OMB and the White House, and then it's coming up here. And I don't think there's any way, short of this completely new privatization scheme which I don't think will work, of avoiding funding review by your committee and authorizing and by the appropriations committees. But you can take the Trust Fund portion out. And of course, it's called "off budget," but there are various ways it could be completely off budget or a little off budget or a little bit out of here and a little bit out of there.

But you all have a problem. The Congress is part of the problem, as you well know; it isn't just the industry or the regulators. But there's a scheme that we think is available to you to carry out your idea of "off budget," and that's the central most important thing of all the things we recommended, consistent stable funding.

Mr. MINETA. Let me just comment on something you said about the host computer. It may not be state-of-the-art; it may be a year old, but it seems to me that there was a conscious decision made with that IBM 8038 equipment, because at least with this new machine, the host computer we get something like 10 times more capacity and 7 or 8 times more speed than with the old machine.

Sure you can go to a newer machine that is faster, but the incremental cost of that is so much greater that I believe there was a conscious decision made that we didn't have to jump to the state-of-the-art in that sense. So we don't have to have the latest toy on the market in order to take care of the system, and I think that was a conscious decision with the host computer.

Consistency in funding is important. There's no question about that. And unfortunately, we're going through that right now before the Rules Committee because we're caught in a position today with the Department of Transportation appropriations bill coming up tomorrow, of being caught in a squeeze to get the appropriations bill to conform to the budget resolution, so we may lose another $200 million in terms of aviation. That's the way that these things go. But consistency is something that is important, and you're absolutely right.

Mr. HALABY. If only a portion of that total budget was attributable to the regular appropriation process, 20 or 30 percent. If the rest was Trust Fund, you would certainly provide a stable——

Mr. MINETA. Well, everything has to be appropriated. Whether it's Trust Fund or not, everything has to be appropriated. And let's say 80 percent comes from the Trust Fund and the balance from general funds. The whole thing still has to be appropriated.

Let me ask you. In your statement you talk about strong leadership and you say, "The mandate given to the Administrator must be clear, explicit, and exclusive." Are you referring to some kind of a new legal mandate that ought to be given to the Administrator. Or are you talking about within the bounds of present law?

Mr. HALABY. We recommend, as a group, that the President appoint the Administrator for a seven-year term. We have other recommendations, and we can get as specific as you want later on, if you desire.

The seven-year term is obviously an appointment which the incumbent can visualize and count on. There has not been an FAA Administrator yet who wanted to stay that long. The job was exhausting and difficult in some cases; in other cases, it was for other reasons. The average has been less than three years, as you know. And I swear, you have just gotten to know where the controls are at the end of about 18 months or 2 years. It's only in the third and the fourth year that I felt that I knew what I was doing. I've heard that said by Admiral Engen and Lynn Helms and others.

And by the way, there is a unanimity amongst the experienced people about the necessity for most of the provisions that we've been advocating, so it isn't just one antique aviator or ex-Administrator talking to you today.

I think that the President will appoint a man and could case him out—I think if he called up one day and said, "I've lost confidence in you," I think it would be very hard to continue in the job. If it was for some partisan or picayunish cause, the Administrator might stay in the job or try to stay in the job. If that didn't work, and the appropriations committees said, "We are holding up on appropriations for that agency," that's a message that's been heard before and heeded by a lot of long-term appointees.

But the idea that it's a continuing professional job, regardless of who is in the cabinet or who is in the White House, is the important thing. And it's said that just giving independence to the FAA or a term appointment won't do it, and that's absolutely right. I think I've heard you say that, sir, and I think you're absolutely right, but it's the beginning. It puts in a man, appointed by the President, advised and consented by the Senate, who can start making these changes with renewed authority and a sense of full responsibility.

I'll bet the public right now doesn't know who runs the FAA. They think that maybe the Secretary of Transportation, maybe Mr. McArtor, maybe some nameless person is really calling the shots. That isn't good Government. That's not good business.

Mr. MINETA. The testimony you've submitted doesn't really touch on the independence issue directly. Is this because you feel that independence is subsidiary to strong leadership, to the changes in the Civil Service rules, to the changes in the procurement regulations?

Mr. HALABY. If you consider a multi-pronged approach, the most important is the funding, the consistent and stable funding that the organization can count on, plan on, program on, spend on. I think the second probably is the leadership, that there is someone of whom you can say, "I am holding him responsible for safety, for regulation, for enforcement," etc.

The third, I think, is to get him started toward new procurement procedures and programs. We know that you can only make a few changes quickly in that area, but you ought to get back from him within a year his strong recommendations on what he can get and what he thinks you can pass.

And then I think that the other element is first with OPM, and then later by legislation, say, "This is much more like a military institution in a time of crisis than it is like another piece of the Department of Transportation," and give the Administrator the kind of personnel rules and regulations that he can actually be accountable for.

For example, there's no way he can strengthen the research and development staff in the FAA at this time with really top-flight people in the area of operations research. There are just a handful of Ph.D.'s in the whole agency, and maybe there shouldn't be too many Ph.D. theoreticians in the agency, but there should be those highly trained, highly experienced system integrators and software programmers using the latest available technology, much of it having fallen out of NASA and DOD—but he can't hire them. He could, perhaps, with your urging set up a Federal Contract Research Center over here that serves him in lieu of being able to hire those people as employees. He could have that group as his think tank, his systems engineering and technical direction group. In a limited sense he has that in the Mitre Corporation now, a nonprofit approach to it. But there's no way now you can attract into the FAA the kind of scientific and engineering talent that is needed to specify and spend this $24 billion wisely.

Mr. MINETA. Earlier in my questioning of Dr. Albertine I had talked about an Assistant Secretary of Transportation for Aviation as a structure rather than taking FAA and pulling it out, setting it up as an independent body. I don't know if you happened to follow some of the questions and answers during that period.

Would you have any response or any kind of comment on how you might feel about something like that?

Mr. HALABY. I regret to say that I think that it's an unwise proposal.

First, the idea that merely giving him an Assistant Secretaryship immunizes him from that layering process in the Department of Transportation, where the least common denominator usually is adopted, would not prevail in my judgment. An Assistant Secretary for Aviation would have to submit his budget to the Assistant Secretary for Budget. His personnel actions would have to be consistent with those of the St. Lawrence Seaway and the Maritime Administration and UMTA. And you would have, as I see it, just the same process.

In theory, an Administrator reports directly to the Secretary now, so he doesn't gain any stature or clout as I see it. I don't think that would help.

It might help if the 1,000-member staff of the OST was reduced to about 10. That, conceivably, would help a lot, just as in various parts of the Government the supernumeraries were subordinate to the commanders in the line of command. After many tours in the Government, the thing that I find is missing now is that the line commanders are outnumbered now about one to a hundred who are critics, consultants, and overseers.

Mr. MINETA. You mean those are three different groups? [Laughter.]

Mr. HALABY. You mean——

Mr. MINETA. They're all the same, that's right.

Okay. Thank you very much.

Mr. Inhofe?

Mr. INHOFE. Mr. Halaby, I thought it was very interesting that with your background, you are probably one of the few people who was intimately involved in the necessary agencies having to do with the regulators at that time when we went through this before. You were talking about the analogy of what happened 30 years ago.

I would like to have you very briefly just repeat what you talked about peripherally. I had read your written testimony; I didn't find a lot of consistency between that and your verbal testimony, which shows your creativity here. [Laughter.]

But if you could go into that just a little bit, on what was promoting the need for independence some 30 years ago, when the Department of Commerce was there, and then how it happened to get back in, what precipitated that. How close is history to repeating itself, is what I'm asking you?

Mr. HALABY. For me—and I may be more subjective on this than I like—it's very repetitive. The record sounds a little bit like the record in the mid-1950's.

Someone said earlier in the day that the FAA reacts, and to a considerable extent that's true of all Government. It reacts to crises and issues and events.

At that time there were two serious accidents in the west, and at that time the facilities and equipment budget, as I recall, at the Civil Aeronautics Administration was $24 million and being cut. There was no R&D money, none whatsoever, and it was in what is colloquially known as the basement of the Department of Commerce and had been there for a number of years.

The then Secretary of Commerce was a dynamic, strong-minded man, just like Secretary Burnley. It was his agency and he did not want to lose it. However, in the White House there were at least two men that were very concerned that these accidents would reflect upon the Government and the Administration, and one of them was Nelson Rockefeller, who was a Special Assistant to the President at that time. He said, "You ought to set up a commission on Aviation Safety and Organization." And sure enough, President Eisenhower decided to do that and named a Wall Street banker, William B. Harding, as Chairman. At that point I was working in New York and I was made Vice Chairman, and we had four other very distinguished characters in the aviation field and in the field of law and finance.

In the 1950s, we worked on the problem about 18 months and we concluded that the budget was inadequate, that the funding was inadequate, the personnel were demoralized and low level, and that we needed a substantial increase in the positions and the strength of that group of men. We recommended that the President select a man to work out the terms of a bill, and the President selected a member of his staff in SHAPE during World War II, a wonderful man named Ted Curtis. He came in and over a period of several months he put together a bill and a program, and that was the 1958 Federal Aviation Act. It was liberated from the Department of Commerce. General Quesada came in and gave it a real charge as an independent Administrator. I followed him, then General McKee followed me.

Along the late 1960's it looked to us all as if maybe FAA could get more clout, get more integration of highways and seaways and so on with airways, and that in theory you could put it into the Department of Transportation.

That's more or less the evolution. For me, none of those wonders that we dreamed about in integrating FAA into DOT have come about. All you have is a stratification and a layering of the guys who have to do the work down at the bottom.

Mr. INHOFE. In looking at the group that you're representing, I agree I've never seen that group come into agreement because I've had occasion to have all of them talk with me from different view points. But you have the ALPA, you have labor; you have the ATA, the management; you have EAA, the experimentals; AOPA; NBAA; NAA; anybody who conceivably could have any interest. But what they all have in common, and it's at the very top of their priorities, of course, would be safety. We are concerned with that, that's what the public is concerned about, and that's what this subcommittee is concerned with. But the other thing they have in common is that they're paying for all this fund.

Now this morning, or earlier today, I asked Dr. Albertine a question about whether the current funding mechanism of 8 percent plus $0.12 a gallon would be adequate, and I think he was a little cautious in answering it. I think probably it would not be, in my own looking at it and just trying to put the math together.

Now, I would assume that you agree with that, but these people who represent the majority of those who pay into the trust fund in the event that it was necessary to increase it, do you know of any of these 12 organizations that wouldn't formally go out on the line and say, "Yes, we've proposed an increase to cover this"?

For example, when we went to the consolidation of flight service stations—and you have a lot of us who fly with regularity of an area where you have to call, for example, from Brownsville to San Antonio, and because of the intricacies and liabilities that are involved, if you rely on what they tell you 200 or 300 miles away you'll never get off the ground. So what do you do? You don't believe them. That impairs safety.

To correct that, perhaps you're going to have to get back to a more localized flight service station where you can get the individual attention, which is a higher-priced item.

Do you feel that if this were to become independent and the source of funding remained the same as the Trust Fund, that if it became necessary to make some rather sizeable increases, that all of these people—which represent, as you have pointed out, millions of people out there—would have some unanimity in agreement that that increase should take place?

Mr. HALABY. Obviously, they haven't caucused me on that and haven't authorized me to petition for further taxation.

Mr. INHOFE. Yes, I knew that.

Mr. HALABY. But in general response, I know that I personally, as an airplane driver, would be willing to pay more taxes if I thought I was getting better service. I resent paying taxes now at the service level that I'm getting.

You have two major pieces of that FAA budget, in my philosophy. One is what I call military support for national security, and the second is the citizens' protection from falling objects, public safety. Now, that little old lady on the front porch may have never been in an airplane, may never get in one, but she doesn't want the airplane falling on her. So she therefore has some right and general taxpayers have some obligation to pay for that safety service.

Now, there has always been a debate about how much you should charge for national security and public safety as distinguished from regular air traffic control for the users. But let's just say for discussion purposes that about 30 percent of it should be attributed.

From our point of view, we think that that ought to go through the regular budgetary process. In a sense, it ought to be attributable largely to the national security budget. The rest should be out of the Trust Fund, and the Trust Fund—if you get that kind of proportion—is probably enough without additional taxes over the coming years to do that.

Now, we have a major surge of spending here as we try rapidly to modernize the system, so at some point out there—I don't know whether it's the year 1996 or 2000—these capital expenditures surely could come down. Then user fees should cover operating and maintenance expense with a lesser modernization and modification budget. So I think it could be done without a tax increase; but certainly, as one taxpayer, I would pay more if I got more.

Mr. INHOFE. Well, I was asking the question because I've had occasion to talk to representatives of probably all of these organizations, and I find them to be very receptive to that idea. Yes, we want to have a system; here we've got twice as many air passenger miles floating around up there as we had in 1978, and essentially the same system.

I asked the question of Dr. Albertine, it still is the safest mode of transportation, but in your professional opinion can it continue much longer if we continue to do nothing? I ask you the same question.

Mr. HALABY. I am absolutely clear that it would not. We must have a more dynamic organization to deal with these onrushing superdynamic economic and, military, changes.

I think the second answer to that is that we are saying it's safe now because it is safer than any other form, but that doesn't mean that people aren't hurt and killed each year unnecessarily. Also, we must remember that part of the role of the FAA is to reduce delay. Now, there's no earthly technical reason why you can't fly from New York to Washington in any kind of weather in 40 minutes. It's just technically within our reach. And all of the flights that want to fly could do it, but we aren't anywhere near that. The moment we get a rainstorm, there's rerouting. There are all kinds of seizures in the system, sort of "aerosclerosis" in a way. [Laughter.]

And that would not be necessary if we had a modern system with modern management. The FAA wants to do that, but they haven't been able, they haven't been allowed, they haven't been resourced to do it, in my judgment.

Mr. INHOFE. Thank you very much.

Mr. MINETA. Mr. Gingrich?

Mr. GINGRICH. Thank you very much for coming here today.

I read your testimony with interest. I wanted to ask you a couple of questions coming out of it.

On page 3 you say, "The FAA must maximize aviation safety and minimize danger, delay, and discomfort." Two of the three D's you use are in fact not safety-related; they are related to economic convenience and the style of the system.

Could you talk just for a minute about an issue which I know you've heard us discuss earlier today, and that is, should we keep an FAA with the responsibility for the promotion of aviation as well as safety? And are we in fact involved in a cost-benefit ratio in which we place a very high value on safety, but it's not the singular issue?

Mr. HALABY. The sentence is intended to say that safety is paramount; we maximize the reduction of hazard. Certainly, minimizing danger is an element of safety, and the question of delay and discomfort is a little more complicated. Delay is not just economic. It's primarily economic; delay is lost time and production it is also, of course, a question of confidence in the system. Discomfort, of course, relates to going through thunderstorms, turbulence, and has an element of protection of the innocent public.

So with a little literary appreciation, I don't think we intended to get onto the saving of company profits——

Mr. GINGRICH. No, but how do you weigh in the balance the importance of having the maximum relatively safe system—again, the NASA example as used earlier today. If we applied NASA's standards of safety we would ground every airplane every time there was a crash.

Mr. Halaby. Exactly.

Mr. Gingrich. So how do you weigh the balance? And should we retain the promotion of aviation as a significant concern of FAA, or should that be struck from their responsibilities?

Mr. Halaby. Earlier I said that I thought a way to deal with that issue is to say that the FAA should be primarily concerned with safety, but nothing should prevent the Administrator from promoting safety by these measures: establishing and administering accident prevention programs; encouraging airport development, since airport safety is as important as air safety in many respects; educating the public on the importance of aeronautics and its safety and efficiency; and encouraging and assisting the adoption of worldwide safety standards.

Now, if you would authorize and direct the Administrator to do that——

Mr. Gingrich. Well, let me turn you to page 4 where you say, "The FAA must be able to seek new, innovative methods for conducting its procurement," and later you say that "Without a comprehensive package of improvements, no one change can hope to succeed."

As you know, the General Accounting Office suggested that the primary problem with the NAS Plan was an FAA underestimate of complexity rather than the Federal procurement system. What's your reaction to that analysis?

Mr. Halaby. I think there is a lot to that. The first answer, I think, is that there is a lot of merit in what they've said, that the practice of serious operations analysis before designing a system and then simulating a system and looking at two options, which is practiced in NASA. In the Department of Transportation, this up to date process has not really caught hold—with rare exceptions—in the FAA. So I think that's a real factor.

But after you've got it specified, you're out with a Request For Procurement, and you know that there's only one company that can build it and do a good job of it, there's no way under the present rules and regulations that you could go sole source. And that may be desirable after counseling with everybody and double checking with everybody. That could very well be desirable. As I understand it, the Administrator can't go sole source for anything over some very minuscule amount, no matter how sole source everything indicates it should be.

Now, sole source procurement, as you know, is controversial and it is sometimes absolutely the optimal way to go, but he can't do that. So it's a mixture of both. And I would like to see the FAA improve that pre-procurement process.

Mr. Gingrich. On pages 7 and 8 you talk about budgetary treatment. In essence, you're really talking about the destruction of the unified budget. You're saying that for the purpose of aviation not only should we take the Trust Fund off budget, but as I understand your testimony, for all practical purposes we ought to take the whole operation of FAA off budget.

Mr. Halaby. I didn't intend that. I intended that that public safety and national security portion ought to be on budget and that the Trust Fund portion should be off.

Mr. GINGRICH. Except that you do suggest on page 8, "permanent, or at least multi-year, authorizations and coincidental appropriations." Wouldn't that be a rather extraordinary action on the part of Congress?

Mr. HALABY. Yes, sir, it would. And we think it's an extraordinary agency with extraordinary responsibilities. As you know, a lot of people have been trying to find a pathway, that which is in fact the path between the budget committee, the appropriations committee, and the authorizing committee. That's not easy for you all to contemplate or to do, but we think that in unique, unusual, critical situations like this one, there is a path through there and we'd like to help define it. We think we can; if you wish us to provide some language, we'd be happy to do so.

Mr. GINGRICH. How many years do you recommend—I couldn't find it in here——

Mr. HALABY. Seven years.

Mr. GINGRICH. Okay.

You think seven is right?

Mr. HALABY. We do, but that's not——

Mr. GINGRICH. Again, I apologize; I read this but I didn't pick it up.

Are you suggesting that FAA become once again a fully independent agency?

Mr. HALABY. An independent operational agency with all of the checks and balances of the President and the Congress, the courts and the press. We would prefer those overseers to a lot of departmental overseers.

Mr. GINGRICH. Okay, so you would report back to the President, but you would take it out of DOT?

Mr. HALABY. Yes, sir.

Mr. GINGRICH. You would not give it a new advisory council in the sense of——

Mr. HALABY. Yes, we would.

Mr. GINGRICH. Well, would it have the kind of powers of the Safety Commission's Board of Governors?

Mr. HALABY. No, it would not. It would be advisory. They are governing the Administrator, who is the Chief Executive under the Albertine approach. We've looked at that. It has some advantages, and if there was any real chance of passing it, it would certainly provide some early solutions to procurement and personnel actions, and maybe—maybe—funding, though we find it hard to believe that that could pass through the House and the Senate.

Mr. GINGRICH. Well, it's conceivable that an autonomous user fee system that charged rents to Government use—that is, the Government paid *x* amount of rents like any other aircraft user—might in fact be desirable. It solves one of our deficit problems.

Mr. HALABY. We had a great deal of trouble with the separate Administrator for Safety, the so-called czar, and I was fascinated that the Chairman of the Commission was saying that as a matter of personal preference he was concerned about that too and would move toward more of an ombudsman, perhaps. He didn't use that word.

It's possible in my judgment, and it has been the practice, that you can get the adequate checks and balances within the agencies and then subject them to the White House, the Congressional committees, the courts, and the press.

Mr. GINGRICH. Let me ask you one last thing before we go off to vote. If I could summarize, my impression based on your years of experience is that you are saying unequivocally that we need to reform both procurement and personnel policies in order to have an FAA that is workable in the 1990's, and under the current system it's simply not going to be workable. Is that a fair summary statement?

Mr. HALABY. It's not adequate to the demand, and that kind of reform that you and the Chairman and the other members of this committee have been discussing is absolutely essential to keep as safe as we are now and to make it safer, which I think we can and should do.

Mr. GINGRICH. Thank you, Mr. Chairman.

Mr. MINETA. Mr. Halaby, thank you very much for your testimony here and your statement. I know there will be many occasions when we'll still be in touch with you as we try to formulate the path that we're going to be taking.

So again, thank you very much.

Mr. HALABY. As a citizen I'd like to thank you gentlemen for staying with this subject. It's going to be a long and difficult discussion.

Mr. MINETA. It will be.

[Mr. Halaby's prepared statement follows:]

Statement of Najeeb E. Halaby

On Behalf of

Aircraft Owners and Pilots Association

Airline Pilots Association

Airport Operators Council International

Air Traffic Control Association

Air Transport Association

Allied Pilots Association

American Association of Airport Executives

Experimental Aircraft Association

General Aviation Manufacturers Association

Helicopter Association International

National Aeronautic Association

National Business Aircraft Association

Regional Airline Association

Before the

United States House of Representatives

Committee on Public Works and Transportation

Subcommittee on Aviation

June 22, 1988

Mr. Chairman, my name is Najeeb E. Halaby and, at the present time I am Chairman of the Board of Dulles Rapid Transit Inc., a private corporation working to create an essential rapid rail link between Washington Dulles International Airport and the existing Metro system. In addition I fly general aviation aircraft regularly in the system and am Chairman of Janelle Aviation, which provides fixed base aviation services at Leesburg Airport. It has been my honor to have acted as an Assistant Secretary of Defense, Vice Chairman of President Eisenhower's commission which liberated the FAA from the Department of Commerce, then as President Kennedy's Administrator of the FAA, and later as Chairman of Pan American World Airways. On balance, I believe it would be fair to say that I have lived in the cockpit and the airspace, in the board rooms and on the runways, tested and been tested, regulated and been regulated as much as anyone for the past 50 years.

I appear before you today as the spokesman for a broad coalition which shares a deep concern for aviation and has asked me to present our views. The group includes the:

Aircraft Owners and Pilots Association
Airline Pilots Association,
Airport Operators Council International,
Air Traffic Control Association,
Air Transport Association,
Allied Pilots Association,
American Association of Airport Executives,

Experimental Aircraft Association,
General Aviation Manufacturers Association,
Helicopter Association International,
National Aeronautic Association,
National Business Aircraft Association,
Regional Airline Association.

Their members and the employees of their members number in the millions. They cover the full aviation spectrum from inventors, engineers, federal employees, manufacturers, private, commercial and air carrier pilots as well as airport and airline executives. They build the tax base. They and the three out of four Americans who now fly pay the taxes levied for improving the airways and airports. We have come together in response to your call, Mr. Chairman, to recommend substantive changes in the way the FAA should be structured, funded and managed.

You are used to sharply diverse views from these groups and you may ask: "Why are you united here today?" It's because we share a high mutual concern and purpose: the optimum safety and efficiency of the U.S. aviation system. It is in our common interest to reform and renew the FAA for this purpose. We exist to serve the public and national security. It's not that we want a friendly FAA, but an effective FAA with superior technical professionals in the right places. It's not that we love our regulator, but we want modern management of rapid changes in workload, technology, purchasing and prudent use of our special tax dollars. In seeking a long-term, professional, non-political leadership of the FAA we are willing to risk the decisions and actions of a tough commander operating on the technical merits rather than those of remote, inexperienced political appointees.

FAA is unique. It operates 24 hours a day, seven days a week in hundreds of places -- civil and military -- nationwide and abroad. It saves lives and limbs and property not just in the air but on the land and sea as well and in the largest numbers for the longest time and distances. It is so essential to national security that with the stroke of a pen the President can draft it into the Defense Department. Around the clock it must regulate airmen, airways and airports, while building and maintaining a system with state-of-the-art technology. It must maximize aviation safety and minimize danger, delay and discomfort to millions of U.S. and foreign travelers daily. It is literally true that no one can build, modify, maintain or move an aircraft without an FAA employee involved. Moreover, its beneficiaries pay directly in taxes for its services. Therefore, a unique autonomous organization with extraordinary managerial capabilities is required.

The driving force behind our effort has been the clear realization -- which we believe is shared by Secretary Burnley, Administrator McArtor, the President's Commission on Aviation Safety, the sponsors of a variety of pending bills which would reconfigure the FAA and virtually all those with a serious interest in aviation -- that the status quo is unsatisfactory and fundamental change must occur in the approach our nation has taken to running our airports, airways and airmen. The

Administrator of the FAA simply must be given clear and direct authority along with the responsibility to manage the affairs of the FAA.

Simultaneously, the FAA must be assured of consistent, necessary funding. The FAA must be in a position to hire and retain the best and brightest employees in an environment offering challenge and reward -- and with the expectation of high achievement. Finally, the FAA must be able to seek new, innovative methods for conducting its procurement efforts for the multi-billion dollar National Airspace System Plan and beyond and assure development of the national airport system. Independence, in and of itself, is no more the key to solving the problems of the FAA than is adequate and consistent funding or essential personnel and procurement reforms. The fact is, that without a comprehensive package of improvements no one change can hope to succeed.

We well recognize that one does not lightly undertake an effort such as this. The coalition which I represent does not have all of the answers. We can, however, in large measure, take the essential second step of converting our knowledge of the FAA's problems into concrete suggestions for change. The time has come, we believe, for the other parties of interest in this debate to come forward with concrete proposals if we are to avoid ever greater difficulties. We can no longer afford to say that "yes, FAA reform is a nice idea that warrants study" or to criticize solutions put forward by others without offering specific alternatives.

The role of the Congress in this debate is clearly a difficult but urgent one -- and obviously the most important in sorting out various proposals for reform. The debate has been underway for three years but with much more talk of study than action. We understand the difficulty of taking what is often seen as an "industry proposal" or "the administration proposal" or any other suggestion coming from a specific group, and determining which ideas have merit and which do not. We believe, however, that our ideas are good ones -- they were put together with an eye toward real and lasting changes which will improve the capabilities of the FAA even if they result in more imposing regulation of our constituents. These ideas should be looked at on their merits rather than on the politics or personalities. We appreciate your efforts to find the necessary compromises to advance the process and we look forward to the emergence of a renewed, more dynamic FAA better able to master changes as they rush upon all of us.

The secret to success in a high-tech operation has always been innovation and adaptation. If the United States is to continue to lead the world in aviation and its safety, we simply must be willing to alter our approach to the FAA in order to accentuate its ability to adapt and innovate. It must be able to respond on a real time basis -- not years or even decades after technology has passed it by.

While an improved, more fluid approach to the FAA has long been an advisable one, the necessity for it did not become acute until the full impact of airline economic deregulation was felt. Revenue passenger miles exploding from 193 million in 1977 to 404 million in 1987 to 600 or more by the turn of the century and to a trillion thereafter now demand a dramatic response. Events in the aviation industry are moving at a pace faster than that for which the DOT/FAA was designed -- and the structure must be empowered to adapt and to respond to that change.

FUNDING

There is no question, in our judgment that the single most important and complex issue which must be dealt with is in the area of FAA funding. GAO estimates, for example, that the total cost of the NAS plan through the year 2000 will be 24 billion dollars. Clearly, in light of the sums involved, special scrutiny of creative funding is essential. It is, after all, funding which will provide the key for a reinvigorated and determined FAA management to come to terms with the other deficiencies afflicting the agency.

The issue of often inadequate and inconsistent funding for the FAA has always been a contentious one. Twenty-five years ago and longer, the "squeaky wheel" syndrome was as pertinent as it is today. It is unfortunately true that crisis and disaster have too often been the forces that unleash funds for the FAA. The situation in the early 1980s -- in which microchip technology aircraft were being controlled by vacuum tube era radars and computer equipment did not develop overnight.

We are now, under the National Airspace System Plan, making gradual progress on correcting this gross imbalance. But it is not enough. The NAS plan must be improved and updated on a permanent basis. Unfortunately, the imbalance will repeat itself in the coming decades if we do not craft a solution now that will assure measured, metered and consistent funding for the FAA -- the type of funding which is essential to the ever changing operational and safety requirements of that agency.

We must take a comprehensive look at the federal budget and funding process and seek to chart a course through it which will relieve pressure to divert essential self-support for the FAA to other purposes. The Airport and Airway Trust Fund approach has not worked as promised. As you know, the present Trust Fund surplus represents an overpayment of taxes by users. We appreciate your efforts, Mr. Chairman, and those of this Subcommittee to try to come to terms with this problem. Until the situation is resolved, however, until the mechanism is found which best assures delivery of adequate funding to the FAA year in and year out -- the search must go forward.

We believe that the solution may lie in creating special budgetary treatment for FAA funding. Such special treatment must protect both the Trust Fund portion of FAA funding, which represents the cost for non-governmental use of the system, as well as the General Fund contribution, which reflects the national defense and public benefit share of FAA costs. Such special budgetary treatment should include permanent or at least multiyear authorizations and coincidental appropriations. Such an approach, not unlike other innovative approaches utilized to fund special purpose governmental entities with unique operating needs, would provide a better means of assuring that funding for the FAA remains reasonably consistent with the demands being placed upon the agency.

LEADERSHIP

Leadership, of course, is also an essential element in the FAA reform process. As you know, the average tenure for an FAA Administrator has been less than three years. Under the Reagan administration alone, three individuals have occupied the office. It is simply not possible in our judgment to establish strong control over the direction of the FAA without finding a way to appoint and retain a strong, independent Administrator who can be expected to remain on the job to see his or her programs through to conclusion..

An example of what could be a solution to this problem can be found in yet another unique government agency -- the Federal Bureau of Investigation. In the case of the FBI, Congress' search for strong, consistent and accountable leadership led to the establishment of a ten-year term of appointment for the Director. While there is obviously no guarantee that the individual will remain for the full term (although Judge Webster remained for almost nine and one-half years before being asked to head the CIA) the appointment and confirmation process leads to a focus on public spirited leaders who are willing to make these kinds of long-term commitments. It also sends a very important message to agency employees that a leader appointed to a fixed term is a force to be lived with.

It is important in our view that this same type of term appointment be given to the Administrator of the FAA. In so doing we must also create an environment in which the Administrator will want to remain and in which he or she is firmly in control. The Administrator, the FAA, the Congress and the public must know where ultimate responsibility for the FAA resides along with the authority to make the agency perform up to expectation. The mandate given to the Administrator must be clear, explicit and exclusive. He must be in command; he must be accountable to the President, Congress, the Courts, the press and the public. This is ample oversight!

PERSONNEL REFORM

An essential element of management reform must also include a significant enhancement of the ability of the FAA to deal with its special personnel needs. It is the case at the present time that positions within the FAA can literally go unfilled for years due to inadequate flexibility in the pay and benefits available to General Schedule federal employees. A GS-13 controller in Greenville, S.C., living in a $65,000 house simply will not accept a promotion to GS-14 and move to Chicago or New York -- where the cost of living may almost double. Clearly some process must be found to induce these essential personnel to accept transfers. We suspect it might be found in a recognition of cost of living allowance in certain locales defined by the FAA on the basis of its requirements.

More far reaching personnel reform is warranted as well which will retain and improve the best elements of the existing system while adapting it to the unique needs of the FAA. To this end we would suggest the creation of a distinctive FAA Career Service under the umbrella of the Civil Service. Selection to this FAA Career Service, along with advancements and protection of employment rights, should be merit based. Collective bargaining, balancing "no strike" requirements, subject to binding, 'baseball-style' arbitration would greatly improve what have too often been strained labor and management relations. Compensation, benefits and other terms and conditions of employment, which exist under the traditional personnel structure, should serve as a floor level from which new more flexible programs would advance.

Salary levels, while still subject to the overall cap currently applicable, could be broadened into wider salary bands to offer far greater range in compensating and motivating employees. The FAA should be free to design, not only a cost of living incentive but also other incentive programs to respond to particular personnel needs. Chronic problems, such as the difficulty the FAA has experienced in hiring and retaining highly-qualified scientists and engineers, could be met quickly with a specialized employment program. Similarly, when combined with a reliable funding program this improved personnel management flexibility would permit the design of a dependable career ladder within the FAA. Not surprisingly, employees are far more willing to accept career development transfers, even to less desirable locations, if they are not financially penalized for doing so and they know that they will not linger in those locations indefinitely due to inadequate permanent change of station funds or lack of room for them to advance. Our recommendation would permit the design and adaptation of the system demanded by operating needs.

It must be recognized that the FAA, as an extraordinarily advanced, high technology organization, has a correspondingly extraordinary need to recruit and retain the highest quality engineers, software designers and scientists. Under the present salary structure and hiring rules this is simply impossible, and the agency must constantly and unsuccessfully scramble to keep up. A solution must be found which will permit the FAA, either within the present structure or through a Federal Contract Research Center or some similar proven device, to remain competitive with private industry for the recruitment of such individuals. Were the FAA free to set salaries on the basis of market conditions -- as it must to compete for these limited resources -- its return on investment would be immeasurable.

The FAA is not well served by the current complex, rigid personnel classification system, nor a government pay structure which is not conducive to the use of rewards and incentives. It is not well served by personnel ceilings which reflect budgetary and political factors which override work and safety demands. It must be freed of restrictions on use of retirees, free to provide special pay plans for unique employees, and free to design and fine tune its hiring and personnel rules to the needs of a unique agency.

The standard response to the suggestion of a need for personnel and pay policy flexibility for the FAA is, of course, that these are problems endemic to the government. "Shouldn't we fix the problems across the board, and not just those of the FAA?"

The answer, we submit, is quite properly "no." The FAA as I have explained is totally unique. To a far greater degree than any other civilian agency it must respond to external demands placed upon it twenty-four hours a day, seven days a week in the desert and in the arctic, on the sea and the high mountains. It must be equipped to respond with personnel as mobile and resources as up-to-date as the industry which it is intended to oversee. While up until ten years ago it was possible -- with some difficulty -- to accomplish the goals of the FAA within a traditional Departmental structure, changes in the aviation industry since that time have now made success all too slow and often impossible.

If we are to permit aviation to meet its full potential, to provide aviation transportation benefits to the broadest spectrum of society we must free the FAA of outmoded strictures and design in their place a freer, more flexible FAA better equipped to meet the safety demands of the future. NASA would not have made it to the moon without such legislated resourcefulness.

While some minor improvements are achievable under current law in the area of personnel reform, we would seriously question their utility. These changes unfortunately are typically homogenized through OPM review and re-review to the point of exasperating delay and reduced utility. Furthermore, these changes are uniformly reactive responses to long simmering personnel problems -- the existing system is of little or no utility in terms of proactive policy changes. While such efforts should, of course, proceed they must never be seen as taking the place of or reducing the need for true underlying reform.

The government is replete with examples of special purpose entities designed outside of the "standard" government practices with particular goals in mind. The Central Intelligence Agency, NASA, the Tennessee Valley Authority, Federal Deposit Insurance Corporation, and the Department of Energy all were crafted by Congress with special attributes to enhance their ability to accomplish specific unique and urgent programs. The time has come to utilize that same approach in reforming and renewing the FAA and to match the FAA's abilities with the job it is being instructed to do.

PROCUREMENT IMPROVEMENTS

Just as flexibility and incentives are key ingredients in personnel management improvement, they are also important to the solution of the FAA procurement dilemma. While implementation of the multi-billion dollar National Airspace System Plan has and will continue to provide a tremendous boost to the FAA's capability to respond to demand, it is unfortunately true that the existing procurement process has slowed progress to a substantial degree. As a result, many of today's "new" improvements are no longer state of the art by the time they come on line.

We would recommend an adaptation of the current procurement system to the new in seeking improvement. We would suggest a process, drawing on features from the Packard Commission report on Defense procurement and the follow-on study by the Center For Strategic and International Studies to achieve the desired results. We seek clear, short command channels, funding stability, limited reporting requirements, communication with users, and early prototyping and testing -- all managed by a small, high quality staff as called for in the Packard Report. Specifically, we would suggest:

First, that there should be established within the FAA an additional Associate Administrator position specifically charged with creating and administering an acquisition program of excellence. This would provide the corollary benefit of raising the status and urgency of the procurement program within the FAA.

Second, Congress should articulate clear direction to the FAA to proceed with its procurement efforts in the most efficient and expeditious manner permissible under current law. This mandate would be incorporated in the program along with structural reorganization to reduce redundant review and place the procurement team in direct consultation with both the product user and the procurement decision maker.

Third, and finally, the Associate Administrator (Acquisitions) should be charged with responsibility for review of the mechanics of the entire procurement program of the FAA. Legislative changes that are determined to be necessary or desirable should be incorporated into an Associate Administrator's report which should be transmitted through the Administrator directly to the Congress. We would recommend that this occur within two years of the establishment of the Associate Administrator (Acquisitions) position and that the report's recommendations go into effect unless disapproved by the Congress.

ADVISORY COMMITTEE

In order to faiclitate these new steps, the last major recommendation we would make would be the creation of an advisory committee. Such a committee, made up of a cross section of our wisest citizens, including users of FAA services, would serve as a sounding board for the Administrator and a conduit for communicating aviation industry and user concerns back to the FAA. The creation of the committee should be an essential part of the legislation.

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In conclusion, Mr. Chairman, -- both personally and on behalf of the aviation groups I am representing today -- we would like to thank you and the Subcommittee for your attention to this critical matter. The establishment of an autonomous FAA with a fixed term for the Administrator are essential first steps in the process of making the FAA into the exemplar of government excellence. Putting those features together with the other recommendations we have outlined today would enhance the potential for exellence immeasurably.

It is apparent from testimony before this Committee, recent statements of the Secretary of Transportation and the reports of the Aviation Safety Commission that the time has come for this historic 100th Congress to act on the urgent need for FAA reform and renewal.

END

Mr. MINETA. There has been a call of the House for a recorded vote, so we will recess and reconvene on our return.

[Recess.]

Mr. MINETA. The Aviation Subcommittee will please reconvene.

Now we have Mr. Mark Abramson, Executive Director of the Center for Excellence in Government.

Mr. Abramson, we have your statement. It will be made a part of the record, so please proceed in your own fashion. I appreciate your patience and forbearance.

TESTIMONY OF MARK A. ABRAMSON, EXECUTIVE DIRECTOR, THE CENTER FOR EXCELLENCE IN GOVERNMENT

Mr. ABRAMSON. Sure, that's fine, Congressman. It's been a long day and I will not try to make your day that much longer. I would like to make a couple of opening remarks and then be free to answer any questions and talk about anything you think would be helpful to you.

I have been here all day long, right behind here, taking in what people have said. I'd like to reflect now upon what I've heard today and reflect upon your job, which has always intrigued me. I'm a political scientist. I've always enjoyed Congress, and I think you have a very interesting job.

Let me tell you what I've concluded after spending a whole day with you, and it has been a whole day. The other thing I'd like to mention is my recommendation that in the future, all witnesses should go in alphabetical order, which may be to my advantage. I would even beat Jack Albertine.

I applaud your committee for taking an in-depth look at FAA. Hope would be that other committees would take a look at their own agencies and spend two days like you have done, calling up people and taking an in-depth look at specific agencies. I think all agencies confront many of the same problems that we've been talking about in the FAA case.

In the FAA case, I think your job is both hard and easy. To take the easy part first, I think today you have gotten agreement that there are problems. People do clearly agree on what the problems are, and I'm going to focus in on one problem today, personnel.

What I heard people say today over and over again was that personnel and procurement problems. Now, that's the easy part of your job. You have agreement on the problem. The hard part of your job is that nobody quite agrees on what to do about it. The point that I would like to make, which is my major point, is that I think people have made a leap in assuming that the only way to fix up the personnel situation in the Federal Government is to have an independent agency. I think that is wrong. I think you can fix up the personnel situation, and I think you ought to. I should emphasize that I agree that there are clear personnel problems within FAA, and if you want we can talk in a little more detail about what the exact problems are; but I think they can be fixed, however, either inside or outside. Even if you go toward an independent agency, you're still going to have to fix the personnel system up.

So my main point today would be that the personnel system has to be repaired. I think you've got agreement on that. I think there is a lot of creative thinking that is now under way throughout the Congress on personnel. I think the Executive Branch is also doing some creative thinking. I think OPM is doing much innovative thinking right now. So you have a lot of people thinking about these issues. I think you have to be a lot more creative than we've been. I think the General Schedule ought to be completely reexamined; I believe it does not fit for all agencies.

I would like to see each agency develops its own personnel system to fit its own needs. I think that's clearly the case with FAA. FAA is very complicated in that you really have three or four FAA's. You have the air traffic controllers, which people talk a lot about, but then you also have the safety inspectors, which was talked in the Washington Post, and you have the scientists. So you really have three distinct parts of FAA, and I think there needs to be a lot more creativity on personnel systems to fit the needs of all these groups.

I think you don't have to have an independent agency to fix the FAA personnel problem. I think that has not been emphasized enough today.

The final point I'd like to bring up is that we have a misunderstanding about the oversight functions of both executive departments and Congress. I think the problem is that there is both constructive oversight and destructive oversight, and it just depends on how well oversight is done. I believe that there is a role for Congress in oversight, and I think your committee is a good example of constructive oversight. I think there is a role for the Office of the Secretary in DOT to have constructive oversight. Oversight can either be done well or it can be done poorly. My concept reflects my time in HHS, which has all the same problems component and an Office of the Secretary. These are the same issues over and over again which all departments face.

I would hope that an Office of the Secretary would be additive to the process. I agree that some of the Offices of the Secretary are too big, but their role should be an additive one to help agencies rather than hinder. I think the role of Congress is also to help agencies and not hinder them, and I think what you've been trying to do today is to figure out a way to solve their problems.

I think much of the problem has been a lack of teamwork between an Office of the Secretary and agencies as well as lack of teamwork between Congress and the Executive Branch. I think the problem is not just oversight. The problem is when oversight is not executed very well, and when oversight becomes dysfunctional and there are too many layers of oversight. I think we can't just say that oversight is bad. I think there is some oversight which is good for the system.

Frankly, in the FAA/DOT case I think that DOT is now being helpful. Their Office of the Secretary and their personnel office are being helpful, and are taking a leadership role in helping FAA figure out how to resolve its personnel problems.

What I would like to see is constructive oversight and teamwork. And I liked what you were saying, Congressman Mineta, about the importance of teamwork and the importance of leadership. There is no shortcut for that. I don't think that a seven-year term, again, will automatically get you good leadership. I think you can have that within the existing system.

My final remark is to say that there are a lot of things that you can look at within the Federal Government right now. There is China Lake, which you talked about today. There is new legislation that Senator Bingaman has introduced to encourage demonstration projects. The Bureau of Standards has a new demonstration project. The FBI has legislation pending which gives retention and recruitment bonuses for FBI agents in New York City.

I think there is a lot of creativity going on right now. There is a lot of good thinking that one can look at. Finally, I'd like to emphasize that we may have to make a change in our thinking about the conflict between having a uniform system of General Schedule in which everybody gets paid the same from Kansas City to New York to Miami to California, and every agency gets paid the same. We need to think about, and I think this trend is now happening, that we may have to develop a different personnel system for each agency, and that would go against the grain, I think, of some Congressmen who tend to feel more comfortable—as do many in the Executive Branch—with uniformity. A GS-15 is the same in Oklahoma as he is in New York. That, I think is what we're going to modify.

There is potential conflict here that Congress is going to have to face up to. I would strongly recommend we develop different pay systems. I don't think we ought to be afraid of it. In fact, Congress ought to be stimulating it. Each agency, and even within agencies, has different problems of recruitment, retention, different sets of skills. I think we simply need more creativity. But again, that is going to be a change for many people.

Congressman Mineta, I'll be glad to answer any questions which you might find helpful.

Mr. MINETA. Thank you very much, Mr. Abramson.

Let me just make a quick point. You say a different pay system is possible, but I'm just wondering whether there's a resistance to creating a different pay system for fear that it will politicize the pay system. Right now, if it's a uniform, cookie-cutter approach, there's no decision that has to be made. It's done.

Mr. ABRAMSON. Right.

Mr. MINETA. Because of that, whether or not there wouldn't be a resistance from, say, the Post Office and Civil Service Committee or from the Government Operations Committee, because they don't want to be put in the position of getting pressure from the Federal firefighters, that they're different from the other folks, and they're GS and all the other things ought to be made flexible for them.

Mr. ABRAMSON. I think that's a good question, and there are really two parts to that.

One, I think we have to realize that we already have different pay systems. The military has a completely different pay system. The Public Health Service has a different pay system. So, one, I don't think we realize how many different pay systems are already out there.

Second, I think you're right in that it is political, and Congress is going to have to make some hard distinctions. They're going to have to really look at the NIH scientists who are going to be up here this fall. I'm convinced that you have to look at the FAA and at the air traffic controllers. I think that's really part of your job, to hear evidence from people like you've heard today, and you have to assess which agencies have legitimate needs and can be justified. I think Congress is going to have to make some hard choices, and you are going to end up with a more political system, but with a small "p" in the sense that it's a political judgment, which is your job.

I think we also have to realize that it's going to become increasingly competitive to hire new people in the future. If you look at the workforce, agencies are now beginning to have a tougher time recruiting in certain fields. If you also look at the declining number of people in the workforce—there is a big study that the Department of Labor did on the workforce in the year 2000 you see a much more competitive situation between the public and private sectors for scientists, for engineers, and for potential air traffic controllers. I think one's going to have to look case by case. I think that you have to make the decisions that are going to be tough choices. You are going to have agencies up here asking for special pay authorities, and you'll have to decide when it's justified and when it is not.

I think that the trend is inevitable.

Mr. **Mineta**. One of the organizational alternatives being considered or being talked about to the present FAA would be to establish a Federal corporation of some type, and people have cited where that's been done. Would you consider this approach as being generally considered successful when they said, "Okay, this is an instance where a Federal corporation ought to be established"? Obviously they did that because they didn't feel the organization would fit into the regular Civil Service system. So given the fact that it was designed to be for a specific purpose, do you think the Federal corporation has solved the problem that it was supposed to?

Mr. **Abramson**. Yes, I think that's exactly right. I have really switched my tune on that. I think the way you describe it, Congressman, is exactly right. The corporations were created to resolve the same problems—procurement and personnel—which people were saying is a problem today, and I think they are problems. Corporations do solve the pay problem.

I now think that corporations use a cop-out. I think that Congress and the Executive Branch have to dig in their heels and fight to make all agencies within the Executive Branch work better. You can't just run away from the problems of personnel by creating corporations because I think you will develop groups of "have" and "have-not" agencies. One thing about the corporations, is that you can pay the Administrator more money.

I, however, think you ought to pay a lot of people in the Executive Branch more money. I think the pay of the Executive Branch gets into a very complicated issue of the decoupling between the Executive Branch and the Legislative Branch. I would like to see higher pay for all senior executives in Government, including executive-level appointments. That was talked about today. One of the things about a corporation is that it solves the problem of paying an FAA Administrator more money. But I'm also concerned about the head of UMTA; that's a tough job also. Highway safety—they're all tough jobs, and I think you will have a problem of recruiting people in the future because of pay.

So that's a long-winded answer. I think in their day, corporations were a reasonable response. What I'm concerned about is that you now might have every agency up here—and you do, up and down these halls. The Park Service wants to be independent. Everybody wants to be a corporation, to get out from Civil Service and procurement.

I think what you've got to do is fix Civil Service and procurement, but you can fix it on an agency-by-agency basis. I feel very strongly that all agencies are not the same. What we do throughout in the Executive Branch is not the same; each agency has its own unique needs.

My feeling is that corporations made sense in their day, and it still might be appropriate for some things. But I think you could end up taking half the agencies out of the Civil Service and create corporations, and then you still have the problem of the other agencies which remain.

I think it's a much broader problem that Congress is beginning to confront. How do they cope with a problematic Civil Service system which may make sense in some agencies and some situations, but doesn't make sense in all situations? That's what you have to begin to sort out, and that's why I said that I would like to see each agency subjected to the same scrutiny that you did today—asking hard questions, examining the independent agency argument, and seeing how compelling they are.

I think things can be fixed within the existing system, and that's where I come out because I think each agency is important. There are citizens who are depending on all the agencies of the Government to get the job done. For example, in my HHS background, the Social Security Administration is an important agency, too; there has been talk about that agency becoming independent, to fix up its procurement and personnel systems.

I don't think I've answered your question as simply as I had hoped to do.

Mr. MINETA. So we have the Federal corporations trying to solve the problem, or you can keep it as it is right now and adjust procurement practices, adjust personnel practices to suit the mission of that agency?

Mr. ABRAMSON. Yes, sir.

Mr. MINETA. Any examples of where we maybe have an existing structure remaining the same, but special treatment given for these personnel or procurement practices?

Mr. ABRAMSON. Yes, I think they are, and there's a growing number of them. One is the Defense Intelligence Agency which was authorized by Congress to have its own personnel system. It no longer reports to OPM. They can recruit people as they want. They can hire people on the spot. They have different pay systems. They have relocation bonuses. And there are still within DOD. That's an example—now you have some parts of DOD—such as the Defense Logistics Agency—which are under the old personnel situation.

I think there are more and more precedents occurring each day, giving special authorities to this and that agency. The Veterans Administration has its own personnel system. I think you do have an increasing number of examples. You have the China Lake, which isn't a whole agency but is part of one, which has a different personnel system than other parts of the Department of Defense.

Mr. **Mineta**. When they have been given the authority to go ahead and experiment with, let's say for instance, pay scales, does that necessarily mean that the pay scales are going to be increasing?

Mr. **Abramson**. No, not necessarily. There are really two parts to it. One is the issue of recruitment. What it does, by creating a pay band—as in China Lake, where there are five pay bands, which really takes the GS–15 system and charges it into five, so you have a much bigger range—it means you can compete within a pay band to bring on somebody. You can bring them higher than you could under the General Schedule, but then it begins to slow down. And they also have a performance appraisal system to it.

Now, there is much talk about whether new personnel systems have to be budget-neutral, and that's a very controversial issue. On the recruitment side, you can hire people competitively against the private sector because instead of starting somebody as a GS–9 you can start them as a GS–10, but they are within the same new band. So there's recruitment. It might cost a little bit of money because of performance appraisal when some people do get merit increases.

Mr. **Mineta**. Using that as an example, don't you get compaction then?

Mr. **Abramson**. No, because it's a wider band. Some people are very happy to stay in their pay band and not go up to the next pay band. One of the problems with the scientists is that if they want the GS–15 pay, they often had to become a supervisor. Some scientists don't like to supervise. You can now maintain them as scientists and pay them the same money because they're higher on the pay band, or the same money that they could receive as managers.

So it's a very technical system, but there's a lot more flexibility. That's what you really want to build into the system—flexibility. And you also want to be able to reward people and promote people from one pay band to another pay band when appropriate. Some people do not get promoted, as well.

Mr. **Mineta**. Very well.

Mr. Gingrich?

Mr. **Gingrich**. Thank you very much for your testimony.

I think the thing I am most struck by—and I frankly find myself leaning toward agreeing with you, but I guess until you came today I had not really thought it through in the way you framed it—at the very end on page 13, where you say, "You must decide whether our current system can allow diversity and uniqueness in a system which has historically valued consistency and equity."

I have felt for a good while that we are sort of in the last phases of the Civil Service reform movement which began in the 1860's and 1870's and which was designed to solve two sets of problems, ward politics in America and the European desire for uniformity in bureaucracy.

I'm hearing you say, in a sense—I wanted to explore with you just for a minute three questions about it—that if our objective is a Government which works, and we allow personnel policies to be driven by the requirements of what works, the first thing we learn is that there is no uniform thing called "the Government."

Mr. **Abramson**. Yes.

Mr. **Gingrich**. Okay? Now, if that's true, it would seem to me that there are three areas that might be worth pursuing to discuss briefly that come out of that whole zone of the rise in the Civil Service movement, and I'm not an expert in that area.

The first is the question of how you ensure legitimacy in hiring and firing. The answer was to create this cumbersome and complex Civil Service system we now have.

The second is how you have merit pay and bonuses without getting involved in favoritism, whether political or personnel.

The third is, it seems to me you are describing three kinds of unique requirements. The first is management requirements that are unique, either because you need somebody with extraordinary skills so you ought to pay an extraordinary amount, or for other reasons. The second is technology, that the person you need to hire to do this one thing may in fact simply cost more. And the third is, the problem of geographic location and cost. Those are the three driving factors that seem to make for uniqueness.

I know I've just outlined the whole layer that you sort of triggered, but do you want to comment on any of that?

Mr. **Abramson**. Yes, I would.

You are exactly correct on the issue of hiring and firing. That was really what the Pendleton Act was all about, to get personnel out of politics. I think it did its job, and it's now time to rethink it. I think you are exactly right. That was an equity and due process issue.

I'm concerned now that equity and due process are not going to get the job done anymore because things are getting more complicated. I think the FAA is a good test case of the problems of why you can't rely on the old system.

On the second issue about the bonuses, I don't think that's a political and favoritism problem. I think what you've got to do is trust people. You've got to give people discretion and authority. The private sector does it. The private sector has its problems too, but their thinking is that you have to reward people. You have to give people the discretion to reward people under them.

Mr. **Gingrich**. Well, let me just say to you for a second, there's a passage in Drucker's "Age of Discontinuities" where he makes quite clear the distinction between potential corruption in private business, which is a cost factor to the stockholder and manager, and potential corruption in public business, which is a cancer that threatens everybody.

Mr. **Abramson**. Right.

Mr. **Gingrich**. He makes the argument that you have a dramatically higher threshhold effect in public service. I would just cite to you that the first time you have two people doing a job, one of whom having not gotten a bonus decides to go to the Washington Post and claim it was for personality reasons, you have the beginning of a scandal. It may not be a scandal, but it's certainly a scandal the day it breaks.

Mr. **Abramson**. Congressman, I would argue that we have a lot of experience now with SES bonuses, and I have not seen that article. We have ten years' experience with the Civil Service Reform Act of 1978 which I have followed closely I think it has been successful.

You have to make a premise that people will do their jobs honorably and use discretion appropriately, and you let them do their jobs. I'm in favor of deregulating more and more authority to managers, including the bonuses, and then you hold them accountable as well. But I think in the case of the bonuses, we have a track record in the Government, and it has not been subjected to the problems that could happen.

But that's a risk you have to take. I like your quote from Peter Drucker. The thing that Congress has to reckon with is how much of a risk you can take.

I go out giving speeches all the time that Federal executives ought to be more risk-taking, taking chances. Some people are going to make mistakes, and then you correct it; but again, you correct it agency-specific. You don't create an OMB Circular 182, which only constrains management flexibility. There really is a mindset issue. I agreed with the Congressman this morning that you do have a mindset problem in which people respond to signals, and they have responded to signals: you've got to play it safe, you've got to overregulate as protection.

So I think that this is a problem, but I think the issue is what the next generation of Civil Service reform is going to look like. I think that's what you can think about in the context of today's review of FAA. Can you be creative? Are you willing to give people different pay in different places? Give people more bonuses?

Just one more factor on the cost thing. Evidence shows that people at China Lake who do not perform well are beginning to leave. Some of them may not be replaced, so it's cutting down. I think there is also the issue of cutting down on the overhead structure. I think we need less people and should pay them much better.

Mr. **Gingrich**. Thank you. I think this has been very, very provocative and helpful.

Mr. **Abramson**. Good. I hope I've been helpful

Mr. **Mineta**. Very helpful.

Thank you very, very much, Mr. Abramson.

[Mr. Abramson's prepared statement follows:]

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THE CENTER FOR EXCELLENCE IN GOVERNMENT

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STATEMENT OF MARK A. ABRAMSON

EXECUTIVE DIRECTOR

THE CENTER FOR EXCELLENCE IN GOVERNMENT

BEFORE

SUBCOMMITTEE ON AVIATION

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

June 22, 1988

THE CENTER FOR EXCELLENCE IN GOVERNMENT

20 F Street, N.W. 5th Floor Washington, D.C. 20001 (202) 628-2277

STATEMENT OF MARK A. ABRAMSON

EXECUTIVE DIRECTOR, THE CENTER FOR EXCELLENCE IN GOVERNMENT

BEFORE

SUBCOMMITTEE ON AVIATION

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

June 22, 1988

Mr. Chairman and Members of the Committee:

As Executive Director of The Center for Excellence in Government, it is my pleasure to appear before the Committee today to discuss proposals to improve the effectiveness of the Federal Aviation Administration.

Before starting my testimony, I'd like to tell you that The Center for Excellence in Government consists of over 350 former government executives -- called Principals -- who are now leaders in the business community. Since the founding of The Center in 1983, we have focused our attention exclusively on two issues: (1) the management of government; and (2) the importance of public service. The issues confronting your committee today regarding the Federal Aviation Administration involve both of these issues.

I am not -- and do not pretend to be -- an expert on the intricacies of the Federal Aviation Administration.

In appearing before you today, that is both an advantage and disadvantage. Instead of coming down on one side or the other on the issue of an "independent" FAA, I would like today to put the issues facing the Federal Aviation Administration into a broader context. I feel strongly that the management issues facing FAA are the same management issues now confronting all agencies of government -- and all committees of Congress in their oversight and legislative roles.

The fundamental issue is whether government can be made to work

The fundamental issue facing all of us concerned about government performance is simply whether government agencies can be made to "work" within the existing system. There are many who have concluded that our existing governmental system -- which includes departmental oversight and the maze of personnel, procurement, and other regulations -- simply does not work and that there are certain agencies which must now be taken "out of the system" and made independent entities. Several of your witnesses today have concluded that the Federal Aviation Administration is such an agency.

While the Federal Aviation Administration may or may not have a compelling case to be made an independent agency -- the safety of our skies is certainly compelling

-- there are those who have concluded that there are other agencies which also should be made independent.

Representative Bruce Vento and Senator Bill Bradley recently introduced legislation to make the National Park Service an independent agency. Legislation has also been introduced to make the Social Security Administration and the Food and Drug Administration independent agencies. In all three cases, the reasons for "independence" are nearly identical to those cited for making FAA an independent agency -- ineffective departmental oversight, a cumbersome unpredictable budget process, and personnel and procurement regulations which impede the performance of those agencies.

Even without being an aviation expert, there is no doubt in my mind that nearly all the problems cited in the numerous studies of the Federal Aviation Administration are probably correct. You need no help from me in identifying the litany of problems facing the agency or evaluating the importance of the agency. As a "frequent flyer," I am as eager as anyone for safe skies.

Can the problems of FAA be solved within the existing system?

In my mind, the key judgement that your committee must make is whether you believe the problems of FAA can be solved within the existing system and whether independence will make a true difference. There are two possible broad conclusions that you can reach. The first is for you to conclude that the problems of FAA cannot be fixed within the existing system. If you reach this conclusion, the Aviation Safety Commission and the President's Commission on Privatization -- to name just two examples -- have developed organizational alternatives for your consideration. In addition, there is a vast amount of information available about the nation's experience with government corporations. In reviewing the history of government corporations, many were formed to combat the problems -- such as inefficient personnel and procurement regulations -- now facing FAA.

The second alternative is for you to conclude that the problems facing FAA can be "remedied" within the existing system. The question then becomes how to bring about the necessary changes in the existing system -- not only for FAA but for the many other agencies facing similar pressing problems.

In making your judgement on this key question, you will be making an important statement on the "fixability" and "flexibility" of our present governmental system. As I noted earlier, there are many of your fellow Representatives throughout the halls of the Rayburn, Longworth, and Cannon who have agencies which they think should be made "independent." If FAA goes independent, it could generate a series of very interesting debates on the future of many agencies.

If you decide that change is possible within our current governmental system, the debate will then focus on the steps necessary to improve the performance of individual agencies -- such as the Federal Aviation Administration -- and to make those agencies work.

Are government-wide or agency-specific changes needed?

In your assessment of the need for an independent FAA, I am aware of the myriad of issues -- technological issues, procurement issues, budget issues, safety issues, personnel issues, rulemaking issues, oversight issues -- that you must consider in reaching your final judgement. In examining each of the above issues and assessing the possibility of change, I think there are two questions which must be asked:

(1) Are government-wide changes needed to solve a specific problem?

(2) Are agency-specific changes needed to solve a given agency problem?

My testimony today will be limited to an examination of the personnel issue and whether government-wide or agency-specific changes are needed in that area. In the past, much of the pessimism for solving agency personnel-related problems have stemmed from the presumption that government-wide changes were the only solution to solving one agency's specific problem. I believe that if government performance is to significantly improve in the years ahead, we must move away from seeking government-wide solutions to developing and implementing agency-specific remedies. This will require a significant shift in the thinking of many.

Agency-specific changes can be made at FAA

Simply put, I think there are a series of agency-specific personnel system changes -- some which will require legislative approval -- needed for the Federal Aviation Administration. I believe that a newly designed -- from top to bottom -- pay and personnel system will be required to meet the needs of the Federal Aviation Administration. I also believe that such a system is possible within government today -- provided that many in Congress and the Executive Branch are willing to change the way they think about government and government agencies. There are three broad concepts about government which must change.

First, one must shift from conceiving of government as a monolithic entity to be regulated by government-wide procedures to conceiving of government as consisting of a set of highly diverse agencies.

Second, one must acknowledge that different pay schedules may be necessary to meet unique employment situations throughout government. The current General Schedule (GS) pay scale may well be a dinosaur which has outlived its usefulness. Congress and the Executive Branch might well have to learn that having different pay scales and personnel systems throughout government to meet specific needs is, in fact, fairer than mindless uniformity.

Third, diversity rather than uniformity will have to become the rule of thumb for government in other areas as well. This is a lesson that the business community has learned. In running large corporations, diversity is now fostered in the management practices of operating units. While "headquarters" may intervene in specific situations, the results of such an intervention is likely to be an operating unit specific change, rather than a corporate-wide change.

Examples of agency-specific change already exist

It is important to recognize that in many ways, the three "new" concepts I have outlined already exist in parts of government today. The military has a different personnel system than the civilian side of government. On the civilian side, there are the Foreign Service and the Public Health Service which have their own unique features -- including certain pay and benefits not present in the General Schedule. In addition, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the Veterans Administration, and the Nuclear Regulatory Commission have all received statutory authority to create and manage their own personnel systems.

The Defense Intelligence Agency (DIA) is an illustrative case. For mission related reasons, DIA -- an agency within the Department of Defense -- was exempted from civil service personnel regulations and authorized to design its own personnel system. You now have a situation in which one agency within Defense -- DIA -- has a different civilian personnel system than do other agencies within Defense -- such as the Defense Logistics Agency and the Defense Mapping Agency. The analogue to the Department of Transportation and the Federal Aviation Administration is clear.

FAA must fix three personnel problems: pay, staffing, and training

Let me now put these three concepts to work in the context of the Federal Aviation Administration. There are three clear personnel problems confronting FAA: pay, staffing procedures (recruiting, hiring, firing), and training.

In the pay area, there appear to be four types of pay related problems in the FAA: (1) pay compression between supervisors and non-supervisors; (2) lack of locality pay; (3) pay scale in general; and (4) lack of relocation incentives. The situation is further complicated within FAA because the agency consists of at least four distinct work forces: the air traffic controllers, the safety inspectors, the scientists/technicians, and general management staff. The pay issues listed above affect each group differently. Pay issues related to the air traffic controllers have received the most attention to date.

As you know, there is much work now underway within the Federal Aviation Administration and the Department of Transportation regarding pay, staffing, and training. Among the many activities underway in the Department are: an in-depth pay study; the development of a demonstration project regarding difficult-to-staff air facilities; and experiments to speed up the hiring process. The pay study may ultimately lead to a legislative proposal to your committee.

It is my feeling that the personnel problems listed above are soluble -- but it will require major changes in the personnel system of the agency and perhaps even an entirely new pay system. In fact, for discussion purposes, one might consider the possibility that multiple pay scales may be necessary for the agency: one for the air traffic controllers, another for safety inspectors, and perhaps a third for scientists/technicians.

The question is whether Congress and the Executive Branch will allow different personnel and pay systems -- when necessary to solve clear and specific problems -- to arise throughout government. In the past, there has been a reluctance to create special pay and personnel authorities for fear that a hodge-podge system would develop. While a major thrust of the Civil Service Reform Act of 1978 was to decentralize personnel authority to agencies, the creation of the Senior Executive Service was motivated -- in part -- by the desire to consolidate the various special "supergrade" authorities which were then spread throughout government.

There are precedents for unique personnel systems

As noted above, there are now precedents all over government for creating unique personnel and pay systems to meet agency needs. I have been personally impressed by the results of the China Lake Demonstration project which created a unique pay system for scientists in two naval laboratories. At China Lake, five "pay bands" were created to replace the fifteen levels of the General Schedule system. While the system of "pay bands" appear to be most applicable to scientists and highly skilled professionals, the concept of experimenting and creating new innovative personnel systems is to me the "headline" from China Lake.

Over the last year, there has been an increased interest in exploring new personnel systems throughout government. The Office of Personnel Management is to be commended for supporting such efforts. Congress has also been active in this area.

In 1986, Congress authorized the National Bureau of Standards (NBS) to develop a major demonstration project which began on January 1, 1988. The project enables NBS to experiment with ways to improve NBS' ability to attract and retain highly qualified staff by setting and adjusting salaries comparable to the total compensation of those in the private sector.

A variety of additional demonstration projects are now being developed. For example, the House recently passed legislation authorizing the Federal Bureau of Investigation to experiment with relocation and retention bonuses for agents in the New York City area.

On June 17, 1988 -- last Friday -- Senator Jeff Bingaman and Senator David Pryor introduced "The Federal Personnel Improvements Act of 1988" targeted at stimulating demonstration projects in the Department of Defense, NASA, and other government agencies. The bill would require that a minimum of six, with a maximum of ten, personnel demonstration programs be designed and implemented within two years of enactment of the bill. The bill also permits agencies experiencing recruitment and retention problems to develop special pay rates and use recruitment and retention bonuses as necessary.

Attachment I lists all the demonstration projects now underway or proposed regarding alternative pay and personnel systems. There is clearly much innovative work underway throughout government.

I believe that Congress must encourage -- and sometimes stimulate -- such innovation on the part of agencies. In the years ahead, Congress also must be willing -- when clearly justified -- to make permanent the personnel reforms tested in these demonstrations. There is clearly ample precedent for now implementing dramatic changes in the personnel system of the Federal Aviation Administration. It can be done -- and it can be done relatively quickly -- if there is agreement that diversity should become a part of our government personnel system.

The trade-off is between consistency and equity versus diversity and uniqueness to resolve special problems

Your committee -- and Congress -- is faced with the issue of whether our current governmental system can be made to work. I -- for one -- think it can be made to work, but it will require a shift in our traditional attitudes toward uniformity and fairness in government as I have discussed today.

You must decide whether our current system can allow diversity and uniqueness in a system which has historically valued consistency and equity. The Federal Aviation Administration provides a clear test case as to whether dramatic change can occur within the existing system or whether one must go outside the system to solve specific agency problems.

ATTACHMENT I

INVENTORY OF PAY-RELATED DEMONSTRATION PROJECTS

Under the Civil Service Reform Act of 1978, the Office of Personnel Management has the authority to approve agency projects involving waiver of Civil Service law and regulation in order to experiment with alternative approaches to personnel management. Outlined below is an inventory of pay related demonstration projects that have been implemented or are actively being considered for approval.

Active Projects

Department of Navy (China Lake)

The Navy Demonstration Project addressed recruitment problems caused by requirements to set starting salaries for entry level jobs at the lowest end of the rate range. The project also addressed the inefficiencies in the position classification system for white collar jobs. Distinctions between grade levels in the General Schedule were often blurred and managers (and personnel specialists) spent excessive time writing job descriptions, arguing over job classifications and processing promotions. Pay progression in non-managerial jobs was based on seniority, making it difficult to give unusually large pay raises to superstars or to withhold raises from weak performers.

The Navy Demonstration Project began in 1980 at the Naval Weapons Center at China Lake and the Naval Ocean Systems Center in San Diego. The two most important features of the project are simplified classification, including consolidation of GS grades into broader pay bands, and merit pay for all employees. The project also permits greater flexibility in setting starting salaries.

The key features of this project were incorporated into the Administration's Civil Service Simplification Act (CSSA) proposal.

McClellan Air Logistics Center, Department of Air Force

PACER/SHARE sought to install quality management techniques, to provide much greater flexibility to assign work and to adjust the size of the workforce more readily to fluctuations in workload. The traditional system was thought to inhibit productivity by emphasizing individual performance, narrow occupational series and rigid grade levels.

PACER/SHARE was implemented February 22, 1988 at the Sacramento Air Logistics Center, McClellan Air Force Base. The Directorate of Distribution will test productivity gainsharing and a streamlined personnel system with job series consolidation, pay-banding and a revised on-call appointment program for 25% of the future workforce.

PACER/SHARE also tests the elimination of individual performance appraisals, and shifts performance measurement to the organizational level. In connection with these efforts, the Distribution Directorate will implement new methods of statistical quality control, consistent with those advocated by productivity expert Dr. W. Edwards Deming.

National Bureau of Standards (NBS)

The National Bureau of Standards was having difficulty competing for top quality scientists and engineers. The salaries it could offer were often not competitive with private employers. Furthermore there was no incentive for professional researchers to become managers.

The NBS Demonstration Project was legislated by Congress in 1986 and implemented January 1, 1988. Like the Navy Demonstration Project, it features simplified classification with broad pay bands, and performance-based pay for all white collar employees.

The project also includes a total compensation comparability system, with annual general pay increases based on comparision of NBS salaries and benefits to the private sector rather than just pay. (Actual payment of the increase depends on budgetary considerations and is at the discretion of the NBS Director. At minimum, the Director must pay the government-wide general increase.) Some other features of the project are expanded direct hire and delegated examining authority, performance appraisal involving employee ranking, supervisory pay differentials, flexible probationary periods, recruitment and retention bonuses, and sabaticals for non-SES employees.

Examples of Proposed Projects

Defense Logistics Agency, Ogden

The Defense Logistics Agency, like McClellan, wants to improve productivity and to create as much flexibility as possible to adjust to changing work. They want employees to learn new skills, to be able to take on diverse tasks and to participate fully in the management of their team's work. They are willing to reduce the size of their workforce and eliminate many managerial positions.

DLA would like to test in its Ogden, Utah Depot a skill-based pay concept which has been successfully applied in a variety of private sector organizations. The workforce will be divided into participatory work teams, each responsible for a particular process or product. GS and FWS pay schedules will be combined into a single 7-level pay system, with a single level assigned to each team. Workers within teams will progress through the pay range based on the acquisition of skills required for the team. The basic concept has received OPM approval.

Department of Transportation/Federal Aviation Administration

The Federal Aviation Administration cannot attract enough trained employees to certain air traffic control towers, especially in high-cost cities.

OPM has approved a proposal from the Department of Transportation to conduct a demonstration project testing the use of financial incentives. Recruitment and retention differentials for difficult-to-staff positions should resolve the staffing and pay problems the FAA now faces. These pay differentials will be paid only to attract employees to hard-to-staff positions and only during the time employees actually occupy those positions. It will involve approximately 4,000 employees in air traffic control and other critical safety and support functions.

Alameda Naval Aviation Depot, Department of Navy

The Alameda Naval Aviation Depot near San Francisco, California, is an industrially-funded activity proposing a management system based on sound business practices. Like many activities in large metropolitan areas, Alameda has had major difficulties in competing with private sector employers. Furthermore Alameda cannot entice its ablest machinists to take white collar jobs in quality control or supervision because blue collar wages are so much higher than white collar salaries.

The major changes proposed to date consist of a market-driven pay system, possibly combining blue collar and white collar pay structures, and a simplified classification system, which will consolidate occupational categories and grade levels. The changes are intended to eliminate pay inversion in critical occupations, and increase competitiveness by allowing managers to be more flexible in hiring, moving, and rewarding employees. The concept has been informally approved by OPM, and a project plan will be finalized by Alameda in July 1988.

U.S. Army Aviation Systems Command and U.S. Army Troop Support Command, Department of Army - Gateway 2000

Army finds it has very little flexibility to differentiate its best employees based on pay. Base pay progression is now linked to seniority and awards are insufficient to motivate employees. Army believes it would get more motivational value if a smaller proportion of its payroll went to base pay adjustments and a greater proportion to lump sum payments contingent on performance.

Two AMC commands, AVSCOM and TROSCOM located in St. Louis Missouri, are proposing a performance-centered personnel management system based on recommendations by the President's

Blue Ribbon Commission on Defense Management (Packard Commission). The two commands who are serviced by one personnel office would like to simplify classification, staffing and performance appraisal and introduce management to budget. But most significantly they are proposing a three-step pay system with fixed rates for entry, intermediate and full-performance levels. Additional pay increases would occur only in the form of lump sum bonuses with no additions to base pay. All full-performance employees would be eligible for these bonuses.

U.S. Air Force Headquarters, PALACE MARKET Air Force Locality Pay

The government sets pay ranges for white collar jobs using national averages for all occupations. Our research shows that this averaging (of averages) results in pay rates which rarely match rates paid by other employers in any given locality. Often the government cannot attract quality employees because its salaries are too low and sometimes agencies pay too much. When the government pay rates are too low, agencies experience problems recruiting and retaining good workers.

PALACE MARKET would test the viability of setting white collar pay on a geographic/locality basis. Under this project, pay ranges for clerical and other "local job market" employees would be established based on market rates in a particular geographic area. Progression through the pay ranges would be based solely on individual performance (no seniority or automatic comparability increases). Pay for affected white collar employees could go up in some areas and down in others.

OPM is working with Air Force and Bureau of Labor Statistics to research the broad range of issues encompassing the PALACE MARKET concept. Prior to approving a demonstration proposal, we will create a nationwide white collar pay data base to determine the significance of local pay area variances from the General Schedule. Statistically rigorous local area surveys will then precede modeling of pay policy options for selected "prototype" occupations and areas.

VA Proposal on Pay Differential for Ward Secretaries

The Veterans Administration has excessive turnover among its ward clerks on some, but not all, wards. The differences among wards cannot be further valued in job classifications.

Still in the concept-development stage, this proposed demonstration would test the use of a pay differential to encourage retention of personnel in less desirable assignments. The amount of the differential would be tied to the difficulty or undesirability of the particular assignment and would not be transferrable to other assignments. The VA has suggested this for ward secretaries who turn over at rates as high as 90 percent per year in some assignments. Perhaps the scope could be expanded to include another job series in another agency in order to determine the value of the pay differential in different settings.

FBI - New York

This project involves a House-passed legislative proposal--necessary because the FBI is not covered under the demonstration project provision of the Civil Service Reform Act. The FBI is experiencing severe recruitment and retention problems, especially when FBI agents are reassigned from lower cost of living areas to the New York field office. Under the requested legislation the agents would receive lump sum relocation bonuses provided they sign a service contract of no more than 3 years and they would receive retention allowances while assigned to the N.Y. field office.

THE CENTER FOR EXCELLENCE IN GOVERNMENT

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MARK A. ABRAMSON

Mark A. Abramson is Executive Director of The Center for Excellence in Government in Washington, D.C., a position he has held since 1983. The Center is a non-profit non-partisan organization dedicated the proposition that whatever government does, it should do it well. The Center currently consists of over 350 business leaders who once served as high level government officials.

Since helping to found The Center in 1983, Mr. Abramson has written extensively on issues related to the management of government and the importance of public service. He has testified before Congress on public management issues and spoken extensively to public managers across the United States. He is the co-editor (with Joseph S. Wholey and Christopher Bellavita) of **Performance and Credibility: Developing Excellence in Public and Nonprofit Organizations.**

From 1977 to 1983, Mr. Abramson served as a Senior Program Evaluator in the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services in Washington, D.C. While at HHS, he managed a four year evaluation study of the impact of the Civil Service Reform Act of 1978 on the Department of HHS. He also examined the implementation and impact of the Senior Executive Service throughout government.

Prior to joining HHS, Mr. Abramson served as a Research Associate on the Study Project on Social Research and Development at National Academy of Sciences in Washington, D.C. from 1975 to 1977. While at the National Academy, he wrote **The Federal Funding of Social Knowledge Production and Application.**

He has also served as Staff Associate at Bureau of Applied Social Research, Columbia University, a Teaching Assistant in the Department of Political Science at Syracuse University, and as a researcher on the Commission of Inquiry into the Black Panthers and Police. In 1968-69, Mr. Abramson served as a VISTA Volunteer in Chicago, Illinois.

Mr. Abramson holds a Master of Arts Degree in Political Science from the Maxwell School at Syracuse University and a Master of Arts Degree in History from New York University. Mr. Abramson received his Bachelor of Arts degree from Florida State University in 1968.

He is a member of the American Society for Public Administration (ASPA) and served as a Board Member of the National Capital Area Chapter from 1984 to 1985. He also chaired the Policy Issues Committee of National Capital Area Chapter.

In addition to ASPA, Mr. Abramson has also been active in the Evaluation Research Society, the Maxwell Alumni Association of Washington, D. C., the American Political Science Association, the Academy of Management, the Policy Studies Organization, the National Capital Area Political Science Association, and the Association for Public Policy Analysis and Management.

Mr. Abramson is married, the father of two children, and resides in Springfield, Virginia.

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SELECTED PUBLICATIONS -- MARK A. ABRAMSON

Articles on Public Management

"Don't Let Those Transition Year Tribulations Get You Down, **Federal Times,** February 22, 1988.

"The Missing Issue: A Challenge to the 1988 Presidential Candidates," **Government Executive,** October 1987.

"Can We Improve the Public View of Government," **Government Executive,** July/August 1987.

"Coast to Coast in Search of a Public Service Credo," **Government Executives,** June 1987.

"Executive Personnel Systems in Government: How Are They Doing," **Public Administration Review,** July/August 1987.

Forum: Toward Excellence in Government -- What Can Public Managers Do, **The Bureaucrat,** Fall 1985.

"The Public Manager and Excellence," **The Bureaucrat,** Fall 1985.

"Putting Reform In Perspective," **The Bureaucrat,** Summer, 1983.

(With Richard Schmidt) "Politics and Performance: What Does It Mean for Civil Servants?", **Public Administration Review**, March/April 1983.

(With Richard E. Schmidt), "Implementing the Civil Service Reform Act in a Time of Turbulence", in Patricia W. Ingraham and Carolyn Ban (ed.), **Legislating Bureaucratic Change: The Civil Service Reform Act of 1978,** Albany: State University of New York Press, 1984.

(With Richard E. Schmidt and Sandra Baxter), "Evaluating the Civil Service Reform Act of 1978: The Experience of the U.S. Department of Health and Human Services", in Ingraham and Ban (ed.), **Legislating Bureaucratic Change: The Civil Service Reform Act of 1978,** Albany: State University of New York Press, 1984.

(With Bruce Buchanan, Joseph S. Wholey, Michael Pagano, Martin Strosberg, and Richard E. Schmidt), "Assessing a New Personnel System: Developing an Evaluation Design for the Senior Executive Service", **Review of Public Personnel Administration,** Summer 1982.

Book Reviews

"Cherish Impermanence, Thrive on Chaos" (Review of **Thriving on Chaos** by Tom Peters), **Government Executive,** July 1988.

Review of **The Renewal Factor** by Robert H. Waterman, **Government Executive,** June 1988.

"Capturing Policy, The Politico's Survival Guide," (Review of **Steering the Elephant,** Management, Vol. 6, No. 2 1987

Review of **Management of the U. S. Government, FY 1988, Government Executive,** May 1987.

Book Review of Strategies for Administrative Reform by Gerald E. Caiden and Heinrich Siedentopf, **American Political Science Review**, March 1983.

Mr. MINETA. We now have the second call of the House for a recorded vote, so we will recess at this point for that vote and then return and get Mr. Conner and Mr. Thornton on. We do appreciate those of you who have proven that endurance is a quality in public service. [Laughter.]

[Recess.]

Mr. MINETA. The subcommittee will please come to order.

We have before us Mr. Maurice F. Connor, Chairman, Federal Aviation Administration Conference, Federal Managers Association, and Mr. John F. Thornton, National Coordinator, National Air Traffic Controllers Association.

Gentlemen, your statements will be made a part of the record. Proceed in your own fashion. We will start off with Mr. Thornton.

TESTIMONY OF JOHN F. THORNTON, NATIONAL COORDINATOR, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, AND MAURICE F. CONNOR, CHAIRMAN, FEDERAL AVIATION CONFERENCE, FEDERAL MANAGERS ASSOCIATION

Mr. THORNTON. Thank you, Mr. Chairman. I will abbreviate my statement.

NATCA supports an independent FAA as embodied in S. 1600—the vehicle we see most likely to succeed.

In calling for FAA independence, it is important to stress what can be gained from the change rather than to accentuate past wrongs.

A great deal has also been made of the relationship between the DOT Secretary and the FAA Administrator. I believe that it would be prudent to keep our distance here. Personalities should not be an issue. How to run the system safely and efficiently should.

NATCA has become convinced that we should make the FAA independent because it has outgrown DOT. The agency is now ready to meet the challenges of the next decade, but only if it is freed from the restrictions and restraints that are tugging at it today. Those bridles, whether they be budget, policy, or political tinkering, are being held by the DOT.

However, FAA emancipation in and of itself may not meet the expectations of the aviation community, and in particular the Air Traffic Controllers. There is little point in cutting the FAA loose from the DOT if we are not going to equip the agency with the tools to fend for itself and carry out its mission. These include a steady stream of funding and greater flexibility in personnel and procurement practices.

I am in no position to say whether S. 1600 or any of the House proposals will be enacted into law. Perhaps we are asking for too much, and perhaps there is a certain leap of faith involved in such a break from tradition. However, I am convinced that if we do not take a bold step soon, the FAA will be coming back to Congress year after year, trying to buy more time and palliatives before the system eventually collapses. We can ill afford such a future.

I'd be glad to answer any questions you may have.

Mr. MINETA. Very good.

Let's go ahead, Mr. Connor, and have you make your statement.

Mr. Connor. Mr. Chairman, we thank you for having us today. I want to pass on some comments from our meeting last year with the supervisors here in Washington. They have the highest respect for your grasp of the issues concerning the FAA. They were quite impressed with your detailed knowledge of the system.

The Federal Managers Association also calls for an independent FAA. We support the bill submitted by Congressman Oberstar, H.R. 4650. There are several reasons for that, and the main point today that I would like to bring to you is that the supervisors see the signs that we saw in 1968 and we saw in 1978 that precipitated certain job actions. Those signs are there again; they are today's problems, they are yesterday's problems, and they're going to be tomorrow's problems if they are not corrected.

We believe that the independent FAA would provide the shakeup that is necessary and has been discussed here today.

Two things that H.R. 4650 did not cover that we believe should be included are, one, funding of the FAA. We believe the FAA should be funded by a tax on aircraft based upon weight or the number of seats. That has a direct relationship to the amount of service received by the FAA.

Also, we believe internal oversight would be advanced by the requirement that the Administrator appoint an Aviation Policy Board comprised of industry, consumer, and FAA and other representatives to provide advisory assistance only, no direction.

That concludes my remarks. I would be happy to answer any questions you have, sir.

Mr. Mineta. Very well. Thank you very much.

Now, both of you recommend a tenured Administrator. First, can you elaborate what a long-term Administrator would mean to the line controllers and first line supervisors out in the field?

And secondly, what would we do with an Administrator who is appointed and then turns out, after two or three years into the job, to be not providing the kind of leadership that's really needed? How do we make sure that the person that we are saddled with at that point isn't someone who isn't going to be doing more long-term damage than if we didn't have a tenured Administrator and would be able to get the person out?

Mr. Thornton. I think from the controllers' standpoint that the long-term Administrator would be a positive sign. The controllers would know who their actual boss was. Controllers today like Administrator McArtor, but they say, "Well, he's going to be gone soon," and he will, because the end of the Administration is approaching. They felt the same way about Admiral Engen; they knew he wouldn't be around too long, either. So they do not really pay attention to the policies and the agenda that the Administrator is trying to set. They just go on, work as usual.

I think it would be a signal to the Controller workforce that there is support for their mission; that there is somebody who is going to be their champion and appear before you, before the Appropriations Committees, and before the President and give the message of what needs to be done to the system.

If we got somebody who was not working out, I think you would have a situation as we have had during the last seven years where the Administrator would remove himself. There were complaints from Congress, complaints from the work force, complaints in the media and from the users. Nobody was satisfied with the way the agency was being handled. I do not see anyone of the caliber we are speaking of staying under these circumstances.

Mr. CONNOR. Our point of view is that in the FAA, if you don't like what's going on now, just wait; it will change in a couple of years. That's basically the way the bureaucracy reacts to something they don't like.

I also agree with John that if we sent a message to the controllers that there's somebody up there that really believes in what they're doing—Mr. McArtor has restored some sense of pride to the controllers in years past; all he heard about controllers were the bad things they were doing. He's restored some pride.

We've discussed at length a five- or seven-year term and we don't really have a decision with five or seven, but what we want is some permanence there.

In getting somebody removed for cause or whatever, we envision Congressional oversight. We envision the Administrator coming to Congress on a regular basis to report the status of the FAA, where they're at and where they're going. Also, there would be budget oversight involved in the issues; they would not have a blank check to sit there for seven years and retire, so to speak.

Mr. MINETA. Just as we talk about the Presidency, is there a lame duck Administrator problem in a set term, whatever the length might be? People say, "Well, we'll wait until he gets out"?

Mr. THORNTON. I guess there is always that aspect. It is my belief that this is such a dynamic situation that a person who got in and had as much flexibility in high Government positions as this person would, would do the job the way it should be done and do it to the very end.

I believe the factions in the aviation community would work together with such an individual as long as they felt the job was being accomplished. They might not agree with everything, but on whole they would like the system so they would work with that individual. I think that earlier testimony delivered by the coalition—you had such a diverse group—shows that the aviation community can work together. They were not agreeing with everything that was said, but for the most part they agreed with the statement. So the community can work together and would work together to assist a long-term Administrator.

Mr. CONNOR. I wouldn't view it as a lame duck. I would view it—if an Administrator came in and established his goals, and there are only about six things that we need to do to the FAA to basically straighten things out and then move forward—if he established those goals and the progression was shown at the end of whatever year, his fifth or six year, then the employees would understand that the Administrator had reached his goal. I don't think that would be an issue, sir.

Mr. MINETA. Recently the FAA has taken steps to centralize management here in Washington, D.C. and establish a straight line functional authority from Washington to the field.

In this scheme, the Regional Administrator's authority is diminished. According to the testimony, you endorse this approach.

I'm wondering if you can describe what this sort of change means to the line controllers and first line supervisors. Is there much fallout there in terms of——

Mr. THORNTON. I hope, what it would mean is that the Controller in California would be subject to the same policies as the Controller in Boston. That's not always the case today. There is a lot of maneuverability in managerial positions out in the field. It doesn't always seem to be the same employer. I think it would bring everything together and Controllers would feel that they were being treated equally, the same as their peers across the country. I think that is most important.

I would also like to focus in this regard on labor relations. Since our election, we have had excellent labor relations with the FAA in Washington. We have also had good working relationships in some of the regional offices. If we had good management before the strike at the local level, we still have good management there today. I think this would make that positive, strong, cooperative message from Washington go down quicker through the field and deeper into the work force. I think that is very important.

Mr. CONNOR. Under the old structure there was a lot of manipulation of full-time positions. You may send 100 controller slots to the Western Region, and they end up with 50 slots air traffic, 25 airways facilities, and 25 in the inspection force. That would eliminate that. We would be able to clearly identify who is doing what through this program.

We stress the point that the regions be reduced to three, and that they have administrative functions only, and that the straight line concept be carried through.

The present change, I think, is an effort on Mr. McArtor's part to address that problem, and the political fallout within the Regional Directors, I understand, is quite severe. That may be the way they headed it off, bring four of them in, and the other five really didn't care one way or the other. I don't know for sure.

Mr. MINETA. On page 5 of your testimony, Mr. Connor, you describe how the FAA directed controllers and supervisors to take "numerous impractical and onerous actions causing major problems." Can you elaborate on what types of actions were involved? How would the organizational changes that you advocate change this situation?

Mr. CONNOR. Specifically what it was is that we received a directive from the Associate Administrator for Air Traffic to require all controllers working in the tower to stand, and also on the radar positions on every facility in the United States, if you are to relieve me you are to plug in and listen for five minutes; after you relieve me, I am to plug in and stay there with you for five minutes. So there's a 10-minute set on either side of this normal period.

It didn't take into consideration the number of people that we had in the facility. It didn't take into consideration the number of airplanes a controller was working. Our history shows that if a controller is working a lot of airplanes, they're going to stay there a long, long time until they have the picture.

It was viewed as a slap, if you will, at supervisors, because that's our function. Our function is to make sure that the controllers perform in a safe manner. We were not involved in the situation; we had no input on the directives. It took a while, three months, I believe, to have that rescinded, and I think that was due in part to the amount of pressure generated from the field supervisors under the new concept. Hopefully, those things will be communicated before they are implemented and we will have some input prior to the fact. We discussed that with the Administrator the other day, that supervisors as a group are kind of falling behind in the communications process.

Mr. MINETA. Okay.

Since I've got four minutes to get over and vote, let me recess at this point.

I guess I am through with the questioning at this point for you, John and Maurice, so let me go ahead and release you.

[Recess.]

[The prepared statements of Messrs. Thornton and Connor follow:]

TESTIMONY OF JOHN F. THORNTON, NATIONAL COORDINATOR, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

My name is John Thornton and I am National Coordinator of the National Air Traffic Controllers Association. NATCA is the sole collective bargaining representative for the nation's more than 12,500 Air Traffic Controllers.

In recent months, the aviation community has focused much of its attention on the creation of an independent FAA. After careful consideration, NATCA endorsed that principle as embodied in S. 1600. However, we also believe that some highly beneficial changes can be made at the agency regardless of what Congress decides on the independence question. We are most grateful to discuss those and other issues today.

NATCA has not ignored the skepticism that has been voiced regarding an independent FAA. Some critics charge that few benefits would be reaped by merely conveying independence to the agency. And underlying all of these qualms is the question, "Who is to blame for the inadequacy of of today's Air Traffic Control System? The FAA? DoT? Or both?" And if the FAA is at fault, will turning it into an independent agency merely make a bad situation worse? In other words, will an independent FAA be the ultimate fulfillment of the Peter Principle, whereby an entire bureaucracy rises to its highest level of incompetency?

I don't think so, but there is some justification to the view that the FAA has played a large part in its own demise. The subcommittee is acutely aware of the problems that the Air Traffic Control work force has confronted over the past seven years: inadequate funding, chronic understaffing at key facilities, lack of mobility, antiquated equipment, excessive overtime, burnout and an insensitive and militaristic FAA management.

The FAA did not have much control over some of these elements, especially in the area of funding where DoT and OMB called the shots. However, no one can deny that the agency's human resources record was abysmal. The FAA's attitude toward personnel was particularly disturbing because its employees, whether they be Controllers, technicians, or inspectors, are the very sinew of the agency.

After NATCA won certification in 1987, various newspaper editorials stated that the FAA got the union it deserved. They contended that only the FAA could take a basically anti-labor work force and in five short years turn it into a pro-union one. The Controllers' overwhelming vote for union representation was also a vote of no confidence in the way the FAA managed its people.

Until recently there also appeared to be a lack of leadership and direction in the Administrator's office. Part of this was due to the number of Administrators we have had during the past seven years and the ensuing vacuum of authority that occurred.

Regional Directors and facility managers often made a mockery of the notion that power and policy flowed down from Washington to the field. For Controllers, it was luck of the draw as to how good or miserable their lot would be. And this is still true today. Granted, individual facility managers must be given some flexibility in their operations. However, there is so often so much latitude in the way that a Controller is treated -- whether it be sick leave, overtime or discipline -- that one gets the impression that there exist scores of FAAs, each with its own rules and regulations.

To the great credit of Administrator McArtor, there has been some improvement. And some improvement is quite an achievement given the hidebound culture that has characterized the agency. The recently-announced FAA Task Force reforms are long overdue. NATCA is particularly pleased to see that the nine regions are going to be made more accountable to headquarters. Nowhere is the need for regulatory harmony greater than in dealing with aviation. The FAA's confederacy of regional directors has in the past defeated this purpose. There are also some critics who believe that shrinking the number of FAA regions from nine to as little as three is advisable. This bears looking into if it will make the agency more efficient and more accountable to Washington.

Advancement and compensation have also plagued the work force, and service to the system's users has been shortchanged as a result. The subcommittee knows of the acute shortage of Controllers at various high-density facilities such as O'Hare Tower and TRACON and the New York and Washington ARTCCs. The manpower shortages can be blamed on four factors: (1) DoT and OMB's resistance to rebuilding the work force to pre-strike FPL Controller levels; (2) the scarcity of Permanent Change of Station funds; (3) the inability of the FAA to provide geographic pay differentials; and (4) the lack of incentives to transfer to one of these facilities.

Any private corporation moving an employee to a rigorous new job where the cost of living is greater would be expected to compensate that person adequately. The FAA has not done this and the results are obvious. Controllers do not want to "bid up" to these high-density facilities because in spite of a higher GS rating, many end up losing money in the proposition.

There is an added disincentive. The same Controllers who are qualified to serve at O'Hare or at a Washington Center can earn the same money at a lower density Level V Terminal or Level III ARTCC. In other words, why subject yourself to a war zone like O'Hare if you are not going to get combat pay? Some observers have suggested the creation of a so-called "super facility" with corresponding higher pay and improved working conditions as a means to attract and retain more qualified personnel. It bears looking into.

However, the effect on the Controllers already at these facilities is painful. They are trapped and there is no immediate relief in sight. They cannot "bid out" to another facility because no one will replace them. The only way out is to file for separation papers. It is no wonder that burnout is such a chronic problem at O'Hare and at many of the Centers. But it is a wonder that we are not doing more about the problem.

Six months ago, I suggested to the FAA a new career path for Controllers. Under the plan, a Controller comes out of the Academy, goes to a low-density facility, and then progresses to a higher one. When the wear and tear of the profession begins to take its toll, the Controller moves back down the ladder to the lower-density facility where he or she can still separate traffic and also serve as a teacher for the neophyte Controllers. I never heard a response to NATCA's suggestion.

On the positive side, NATCA is pleased that the FAA Task Force has directed the agency to apply to OPM for a geographic pay differential demonstration. The project is a good start and I hope that it doesn't get bogged down in the combined OPM/FAA bureaucracy. Associate Administrator for Human Resources Herbert McLure is also supervising an entire study of the ATC pay system -- a system which he characterized as "archaic" and causing "pathology." NATCA awaits the findings but I wonder how far the FAA can go given Civil Service restrictions.

Therefore, there are changes underway at the FAA that could make it a better place to work for its employees and a better provider of services for the system's users. However, NATCA contends that greater, fundamental changes are in order if we are to prepare the FAA for the onslaught of air traffic that the experts predict. We believe that making the FAA an independent agency is the first step that should be taken.

Some people ask what makes the FAA so different as to deserve this special treatment. They also worry that every other agency in Washington, including the National Park Service, is going to line up for a divorce. However, the FAA is different from many of these agencies because of its unique mission, and because its relationship with its parent cabinet department has caused far more discord than the intermodal harmony that the founders of DoT envisaged.

The FAA is a strange hybrid when compared to other agencies. In many respects, its sheer size and service-oriented mission make it resemble a corporation -- albeit one in need of a major overhaul. Unlike many agencies, whose function is principally regulation and oversight, the FAA also provides a critical daily service to thousands of users and their customers. And those users of the system -- as evidenced by the new Partnership for Improved Air Travel -- are becoming impatient with the quality service they are receiving and the inability of the agency to modernize the ATC system.

I would emphasize at this point that NATCA does not favor privatization of the ATC system, creation of a government-chartered ATC corporation, or splitting ATC operations and safety into two distinct entities. We believe that air safety is too important to be left in the hands of a private vendor of services. And we also believe that safety regulations and ATC are so intertwined as to be indivisible.

In calling for FAA independence, it is important to emphasize what can be gained from such a change rather than accentuate past wrongs. We have all heard of the much-publicized cases of DoT micromanagement of FAA affairs, such as the ouster of Col. Jannette for stealing Mr. Burnley's limelight or requiring pre-approval of travel plans. These of course are petty and annoying distractions that divert the agency's attention and lower morale. However, taken alone, they are not grounds for divorce.

A great deal has also been made of the relationship between the DoT Secretary and the FAA Administrator. I believe that here too it would be prudent to keep our distance because we would be building the case for an independent FAA on very shaky ground. No one can predict at the beginning of an Administration if there will be good or bad chemistry between those two individuals. Personalities should not be an issue; how to run the system safely and efficiently should.

NATCA has become convinced that we should make the FAA independent because it has outgrown the Department of Transportation. There is no reason that the FAA must carry DoT's bureaucratic anchor around its neck forever. The agency is now ready to meet the challenges of the next decade but only if it is freed of the restraints that are tugging at it today. And those bridles, whether they be budget, policy or political tinkering, are being held by the DoT.

I am not saying that we have to armor plate the FAA or build a moat around it. Quite the contrary, an independent FAA should be made fully accountable for its actions, and I am sure that there will be more than adequate congressional oversight. Nor do I agree with the criticisms that the FAA is too cozy with the industry. Perhaps we need to bring some new blood into the agency, but I have the highest faith in the integrity of the men and women who serve there.

However, FAA emancipation, in and of itself, may not meet the expectations of the aviation community, and in particular the Air Traffic Controllers. There is little point in cutting the FAA loose from the DoT if we are not going to equip the agency with the tools to fend for itself and carry out its mission. These include a steady stream of funding and greater flexibility in personnel and procurement practices. There is a great deal of merit in the proposals enunciated earlier by former FAA Administrator Halaby in his testimony before the Senate Aviation Subcommittee. We commend him on his innovative approaches for making the agency as self suffient and flexible as possible.

Assistant Secretary of State Whitehead recently stated that the utopian believes that democracy is like Jack and the beanstalk. "One need only plant the stalk to produce a healthy plant that thrusts heavenward." In truth, he said, a growing democracy requires care and nurture in a climate of safety and encouragement. The same can be said for the creation of this new agency -- an independent Federal Aviation Administration. It is going to need consistent funding and the free and guiding hand of a long-term Administrator if it is going to succeed.

I am in no position to say whether S. 1600 or any of the other House proposals will be enacted into law. Perhaps we are asking for too much given the turf battles the bills will create. And perhaps there is a certain "leap of faith" involved in such a break from tradition. However, I am convinced that if we do not take a bold step soon, the FAA will be coming back to Congress year after year trying to buy more time and palliatives before the system eventually collapses. We can ill afford such a future.

NATCA appreciates this opportunity to appear before the subcommittee. We are of course ready to work with you on any legislation that would ensure the safety of the system and improve the service we deliver.

Thank you.

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FMA

Federal Managers Association

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STATEMENT OF
MAURICE F. CONNOR, CHAIRMAN
FEDERAL AVIATION ADMINISTRATION CONFERENCE
OF THE
FEDERAL MANAGERS ASSOCIATION
REGARDING THE EFFECTIVENESS OF
THE FEDERAL AVIATION ADMINISTRATION

BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

JUNE 22, 1988

1000 16th Street NW Suite 701 Washington DC 20036 (202) 778-1500

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to appear before the Subcommittee to discuss the effectiveness of the Federal Aviation Administration (FAA) in promoting a safe and efficient national airspace system. We commend you for holding these hearings on this most important subject.

I am Maurice F. Connor, Chairman of the Federal Aviation Administration Conference of the Federal Managers Association, the oldest and largest professional association of managers in the Federal government. The FAA Conference is composed of nearly 1,000 first-level air traffic supervisors and airway facilities supervisors. Our purpose is to promote communication between FAA management and first-level supervisors.

I have been an employee of the FAA for 20 years. During that time I have served as a controller at the Newark, New Jersey, Tower; as an instructor at the FAA Academy; and for the last 13 years as a first-level supervisor at the Norfolk, Virginia, Tower. I might note that I do not appear before this Subcommittee today as a representative of the FAA, nor do my remarks represent the official views of the FAA.

I am accompanied this morning by James Houde, FAA Conference Vice-Chairman; John Wagner, FAA Conference Vice Chairman for Airway Facilities; and Bruce Moyer, Legislative Counsel of the Federal Managers Association.

Our comments today will address the case for an independent FAA; the need for improvement of the FAA's human relations program; the adequacy of the new host computer system; FAA's contracting out of automation services; and the need for legislative attention to FAA's legal and organizational framework.

The Case for An Independent FAA

Today, in a post-deregulation setting involving a dynamic airline industry, we find the FAA operating with an organizational structure little changed since the days of the Civil Aeronautics Board. While that structure may have served the nation well thirty years ago, the situation today is far different.

The organizational and performance shortcomings of the FAA are widely known. Many of these problems stem from FAA's subordinate status as an agency within the Department of Transportation. Multiple conflicts between DOT and FAA arise continually over the direction of FAA programs and procurement, personnel, and resource distribution. Erratic, delayed policy-making and rulemaking is the rule, rather than the exception.

The lack of continuity of leadership at the FAA Administrator level also has compounded difficulties. We believe an independent FAA would lead to greater stability at the top of the organization. Constant policy shifts from

Administrator to Administrator have created an unstable work situation for career employees of the FAA.

The end result is a system characterized by sluggish, micro-managed, often misdirected control at the department level by individuals who lack the technical expertise to make informed and timely judgments. Funding decisions tend to rest more on short-term political benefit than long-term programmatic need.

The safety of the country's 400 million air passengers cannot continue to rely on the present framework. That is why we believe that the public interest is best served by the creation an independent FAA.

We have no illusions that FAA independence, by itself, will resolve workforce, procurement, and other operational problems. A far too decentralized FAA management structure, for example, demands consolidation and reform. Nevertheless, on balance, the removal of FAA from DOT will do more to create a responsive, accountable, and effective governmental aviation body than any other proposal.

The FAA Today: A Sense of Deja Vu

Today, in terms of operational and administrative capacity and orientation, the FAA remains nearly the same organization it was at the time of the controllers strike of August, 1981. Problems with controller and technician workforce size and workload, staffing, retirement, overtime, and training remain.

Moreover, the same operational and human relations problems that existed before the strike--increasing friction between management and employees, ineffective communication, and top management's failure to adequately involve first-level supervisors in the resolution of substantive issues -- continue to exist.

Ironically, a relatively calmer workforce exists today. Nevertheless, nonresponsive FAA employment policies and practices, if left unchecked, will eventually lead to employee mistrust ultimately causing slow-downs and other non-strike disruptions of FAA operations. Relations between FAA and employee organizations will gravitate toward conflict. The concerns of nearly a decade ago will emerge as today's unaddressed problems.

All major studies of the air traffic control workforce, such as those conducted by the Corson Committee in 1970, the Jones Task Force in 1982, and the General Accounting Office in 1985, have found a disturbing lack of effective communication between FAA management and FAA supervisors, technicians, and controllers. This was the single most important factor, in our opinion, leading to the PATCO strike in 1981.

Human relations committees established by the FAA in the wake of the strike, such as Facility Advisory Boards (FABS) and a national Supervisors Committee (SUPCOM) for first-line supervisors, have not addressed major issues, such as staffing and long-term needs of the FAA. Poor relations exist between SUPCOM and FAA Headquarters. Inadequate and untimely responses by FAA to SUPCOM position papers aggravates the relationship. Controller supervisors can only conclude, as the 1985 GAO report reported, that FAA management does not sufficiently consider or respond to our concerns.

Last year, FAA directed controllers and supervisors to take numerous impractical and onerous actions in the performance of their duties and responsibilities, causing major problems. At some locations, controllers and supervisors ignored the directives because they were so unworkable. The incident created a cloud over the role of first-line supervision. Many first-line supervisors considered it demeaning. Ultimately, FAA rescinded the policy. Obviously, the FAA has a long way to go toward creating an environment for professional, particpative management.

Limits on the Capacity of the Host Computer System

The new Host computer system provides Air Route Traffic Control Centers and Terminal Facilities with advanced capacity for performing their missions. Yet this new high-tech equipment has critical drawbacks: its reliance on existing processor equipment does not permit controllers to plug in any additional radar scopes or flight data information systems. This limitation on the acceptance of additional equipment restricts the use of host computer equipment in critical areas, such as Atlanta and Washington.

Contracting Out Automation Services

FAA has been required to contract out automation functions in its Air Route Traffic Control Centers. Automation contractors are doing a poor job, causing delays in their production of new software, which slows the correction of problems with computer programs.

This is an important issue because FAA was required by those at the highest levels of government to contract out for these services. Former Administrator Engen and Associate Administrator Luffsey declared their opposition to contracting, but towed the line as loyal officials and carried out directions. Former Associate Administrator Weithorner has spoken out about the interference and problems of outside authorities directing the FAA. Current conflicts between FAA and DOT underscore these problems.

The Need for Legislative Relief

The resolution of fundamental problems often tends to require dramatic and fundamentally different answers and approaches. The current situation involving a fast-growing and deregulated air system requires no less.

Of the legislative proposals currently before the Subcommittee, we believe H.R. 4650, introduced by Representative James Oberstar, represents the most effective approach twoard improving the FAA's legal and organizational framework, as well as its operations. It would create a strong, indepenent FAA with long-term membership responsible for safety. It identifies and corrects today's problems - staffing equipment, procurement, long range planning.

In addition to the provisions of HR 4650, we believe Congress should consider funding the newly-organized FAA through a tax on aircraft, based upon gross weight or number of seats per aircraft. This tax would replace the aviation trust fund. The amount of tax, as well as appropriation levels, would be established by Congress.

In addition, we believe internal oversight would be advanced by the requirement that the Administrator appoint an Aviation Policy Board, composed of industry, consumer, FAA employee, and other representatives, to provide advisory assistance.

Conclusion

Growing budget and revenue pressures during the next decade increasingly will require departments and agencies to justify their existence. Just as this is a healthy influence, so it is appropriate that the Committee now engage in considering the usefulness and effectiveness of the FAA.

There are many dedicated and motivated individuals within FAA who will work to create the safest air traffic system humanly possible through public service. We look forward to continuing to work with the Subcommittee in pursuit of that goal.

We again thank you for the opportunity to appear today and shall try to answer any questions.

Mr. **Mineta**. The subcommittee will come to order.

We are pleased to have Mr. Garry R. Havens, President, Midwest Air Traffic Control Service. Mr. Havens, we appreciate very, very much your forbearance and patience, and your statement will be made a part of the record. You may proceed in your own fashion, sir.

TESTIMONY OF GARRY R. HAVENS, PRESIDENT, MIDWEST AIR TRAFFIC CONTROL SERVICE, INC.

Mr. **Havens**. Thank you, Mr. Chairman.

It's a pleasure to be here. I guess I have the dubious distinction of being the only representative from the private sector side here today.

I'm just going to make a few statements concerning some of these budget things we've been talking about. It's not my area of expertise; I have an observation to make in that area, but before I do let me just briefly state my qualifications.

I've served as Chief Executive Officer of Midwest Air Traffic Control Service for the last 10 years. We are currently the largest private air traffic control service in the country, operating 21 air traffic control facilities, control towers, across the Nation. We probably handle a couple of million landings and take-offs a year. We also provide maintenance and weather technicians, and we also build and design mobile control towers and fixed control towers, with several in place. One mobile tower was used by the FAA in California last year while they were redoing their own facility.

First, I have a comment on the budget. We heard a lot of talk today about the budget. I'm certainly not an expert on that area, but I do have an observation to make from my dealings with the FAA and from what I've seen in some of their funding requirements.

There is a lack of a mechanism there for them to do what they want when they want to do it. It seems that once they have their budget appropriated, it's very structured and stiff and they're unable to make changes in midstream, if you will. Particularly, this question of regionalization, each region seems to have funds appropriated for their particular region; as you know, there are several of them across the country. As an example, if one region has a surplus and doesn't use all their funds for the year and maybe another region has a need for money, they can't transfer that. That money basically has to go back to the Treasury and Congress has to reappropriate it again. It's a time-consuming thing, and by the time it gets done the need is no longer there or it is certainly past its time.

It seems to me that there has to be a way to get around that in a quicker fashion. From the private side, just looking at the way companies approach this thing, it would seem to me that in a particular area—let's take a region, for example. If a region has monies appropriated and they have X amount appropriated for construction purposes and X amount appropriated for air traffic control personnel and other areas, if they have an excess that they didn't use in the construction phase, it seems to me reasonable that they should be able to use that as they see fit in other areas. Under the current system it's difficult for them to do that.

So that's basically my only comment on the budget. Like I said, I'm certainly not an expert in that area and I don't want to make any sweeping comments as to how that could be changed.

Next I'd like to go into this thing about—I've heard some people say here today that we don't need quick fixes, that we need to look at the long-term sweeping changes, and that we need to completely revamp the FAA and take it out from under the DOT and change the whole system. Well, some of these things may be what we need, but that isn't going to help us next week or six months from now. It seems to me that when you have a wound the first thing you need to do is clean that wound and prepare a sterile bandage for it, then you can start the operation.

There are lots of things that can be done in the system the way it's set up right now to alleviate some of these problems, some of the questions that you're asking for testimony on. For instance, on this issue of cost of living incentive pay, that system has been in effect in the military for some time. They provide incentive pay and cost of living pay at locations where that's needed. For instance, in high cost of living areas they provide extra pay; if they have a job skill that they want to retain, they provide proficiency pay for that job skill. It ranges into thousands of dollars in some cases. I don't see any reason why that can't be done immediately with very little trouble. That can be instituted under the current system without violating any Civil Service requirements that are there now.

I guess my main area of expertise that I want to get into here is really in two areas, involving the hiring and training of controllers under the present system, and then I'm going to get into the privatization of the lower density control towers, which I'm involved in more than anything else.

I see this as a very, very important tool that the agency has available to it right now to save millions of dollars and taking needed manpower and moving it where it needs to go. Let's take the hiring and training procedures right now.

The FAA has an academy. They go through intensive screening and testing to get people into that academy, then they get them in there and spend six months training those people. Of the people they put in there, less than half of the people make it through the academy, and of those who make it through they go out to the field and they have an additional washout rate of over 50 percent. So when you finally get the full proficiency level controller, as it is called, two years or three years down the line in the case of a center, you've got a situation where maybe only one in five of the original people who started out in the academy makes it. It's a very, very expensive, very time-consuming procedure.

I submit that there are systems out there on line right now to take this out of the FAA system altogether. There are organizations and colleges out there that offer all the training that the academy does right now, where these people can go right into the facilities at the hands-on level and begin their air traffic control training right in position. The agency can avoid this six-month training procedure and save a lot of money by letting the private sector take care of that.

Now, there are going to be some problems in that, of course, but no matter how you look at it, it doesn't make any sense—and I've made this statement—it doesn't make any sense to pay for the process of professional training if you don't have to. That's why these colleges and technical institutions exist.

There is no doubt about it, people will pay for their training and they will be standing in line to do it. We've seen that out here. We have people calling us all the time wanting to know how they can be trained as an air traffic controller. Basically, I tell them that we don't have the authority to do that right now; we recommend the colleges and the institutions that do have the programs and provide the simulator training, the same training that the academy provides. If they want to go through that, that's fine, but there's no guarantee that they are going to get hired by the agency and have any better chance than somebody right off the street under the current rules.

There are some isolated cases right now, though, where the agency is taking these trainees out of these certain institutions and colleges and putting them right in the facilities. They have examined their training programs; they have deemed that they are as good as their academy, and they're taking those people right out and putting them in the facilities.

I think this is what we need to do. To ensure that you have a proper and sufficient developmental training situation, the FAA would probably want to contract—at least initially—with the appropriate organizations or colleges to supply a certain amount of developmentals in a certain time frame, and then pay back to that organization a small fee when that person gets checked out in the facility. In other words, it's not a question of where the facility can just carte blanche send in a bunch of people; if they don't make it, they don't make it. We need some kind of an incentive for quality control here, and that incentive would be that for every successful student who makes it through, the organization gets a small fee paid back to it by the agency.

I think you will find that once this pipeline is established you're going to have no problem at all getting all kinds of qualified applicants, ready to go to work, in the facilities in the field. That's one of the biggest problems that the agency has right now; it's what they're crying about. They're saying, "We don't have people. We need people. We're short on manning." It's because of their own training system that they have a problem.

What I'm saying is that the availability of a private system is there right now, today. It's ready to go. It can become functional in a very short period of time at the level that the agency needs to take over the academy functions. That's something that ought to be looked into.

I had a comment in here—I'm not really going to address it because I don't think it's all that important at this level—about interagency reactions or interpersonal relationships. Down in the field I've seen that part of the problem with this decentralization, where each region has its own control, and even within a region—for instance, an approach control that works with a center in a large city, for instance—each one has a manager where neither one has any control over the other one. They are totally independent. If there's an airspace problem that's going on there or a handoff procedure problem between the two facilities, there may be no suitable means of resolution. If the manager of the approach control decides he's not going to take those kinds of handoffs, you're just going to have to eat them and "spin," if you will, those people. That's an air traffic control term that they use.

There's nothing that can be done there. I've seen this over the years, and it just seems to me that that's something that ought to be addressed out there in the sense that maybe the management system ought to be looked at very carefully on the control of a center versus an approach control. Maybe there ought to be somebody who has control over all the air traffic agencies in a particular region, some sort of a mediator-type situation where if two facilities have problems with coordinating procedures, instead of them just snubbing their noses at each other and saying, "We're not going to take these people," or, "We're not going to do this or that," they can go to somebody and say, "This is our problem. We have a coordination problem here. Mediate it for us." And it can be done. There are lots of ways you can approach that, but it seems to me that probably some unbiased individual ought to have that position outside of the agency that has not been a controller, perhaps, but who knows air traffic control. Probably a commercial airline pilot who has been flying in this system for years would be somebody who would be very good at sorting out those kinds of coordination procedures between two facilities.

I want to get to what really is my area of expertise, and that is the privatization of Level 1 VFR control towers. This is something that has been on line with the FAA since 1981, since the strike. There was legislation in 1981 to alleviate the Air Traffic Control System at that time under the Airways and Airport Act of 1982, to take the Federal control towers that were closed because of the strike and let private contractors pick those up and run them. And we had the very first test facility in 1981. We were under tremendous scrutiny and observation, and by the FAA's own examination that test case proved to be more successful than their own facility did We got better comments from the pilots and the users than they did the year before when they were in that same facility.

There is no question that the private sector has proven its ability to operate at least the lower level or echelon of the FAA's function. It simply does not make sense to me that they are utilizing over 8 percent of their entire workforce to operate 116 Level 1 VFR control towers at little airports across the country which the private sector could be doing. We're ready to do that right now. We've been ready for years. The program was supposed to have been completely changed over to us by now; it's just been stonewalled and slowed down.

There's a new plan out right now, a new draft, called the Federal Aviation Administration Low-Activity Level 1 VFR Control Tower Plan dated April 11, 1988. It's put out by the Air Traffic System Plans and Programs Division. I would highly recommend that your committee review this. This is their 10-year plan to complete this program. It was started in 1981, and quite frankly, it should have already been completed.

I have reviewed this and in my opinion, it's another case of stonewalling. They are only looking at putting on line maybe another five facilities in the next two years. There are 116 out there that they're operating right now. We're talking about 800 or 900 controllers that they could move somewhere else in Level 4 or Level 5 facilities, approach controls and centers, where they need these people.

This is something that ought to be addressed in the next couple of years. I'm not suggesting an overnight changeover, but we're ready to go. We've been ready to go. The Department of Transportation is in full support of us. Mr. Robert Collins, Special Assistant to the Director, is very interested in this project. He has met with some of us in the private sector, and he has been encouraging the FAA to speed up this process of changing this over to the private system.

A lot of people don't realize this, but right now there are some 50-odd control towers being operated outside of the FAA. This is a very significant portion of the control tower system across the country. There are only 500 control towers across the country, and 50 of those are operated outside the system. All of the quality control measures and all the checks and balances are there already. Our people have to be checked out in the same manner as the FAA controllers. Their examiners come in and examine our people. They do spot inspections. So everything is there in place, ready to go; all that needs to be done is for somebody to say, "Let's go and do this thing, get this thing changed over." That will solve, in an immediate sense, a lot of the manning problems that they have right now.

I think that with the dual combination of moving ahead on this privatization of the Level 1 facilities—I'm not suggesting that the private sector move in and take over the more complex facilities; I don't think that's appropriate, and I'm not an advocate of that—but there's no doubt about it. We have a track record here of over eight years that not only says that we can do it, but we can do it very well. I think it's time that we get going and do it.

The combination, as I said before, of taking the training out of the academy, let the FAA get out of that business and move that into the private sector as well—that and the Level 1 facilities will take a tremendous burden off of their shoulders right now. And in the foreseeable future, the next two or three years, this can make a big difference in their ability to handle what they need to handle in the 1990's.

Mr. Mineta. Very well. Thank you very, very much, Mr. Havens.

I know I've had conversations with the FAA about this whole idea of training through private schools. The first thing I got as a response was, "Well, those air traffic controllers would only be good at the towers. They wouldn't be good at en route centers." Do you have any comment on that?

Mr. Havens. Yes, I do. I have visited some of these training facilities; I have viewed their simulators, their training programs, the problems they use. I have also seen what the academy has to offer down there—incidentally, I have a controller background; I have 18 years of air traffic control experience myself, none with the agency. It was with the military and then in the private sector.

In my opinion, what I've seen in these institutions will produce individuals who are equally as well trained at all levels that the agency requires at the training phase, from the VFR control tower right up to the advanced, if you will, approach control and conventional approach problems that they produce on these simulators; as an example, when the radar goes down and the controller has to control traffic simply by time and airspace requirements and altitude requirements on his strips. A very complicated procedure, but there are institutions out there that offer all of these same training things that the academy has.

Mr. MINETA. Incidentally, do they still use the boats? [Laughter.]

Mr. HAVENS. Yes, and in fact, when it goes to manual approach, you will still find a boat system.

Mr. MINETA. Do very many know of them?

Mr. HAVENS. The integrity, as I've seen it—my company doesn't get into the radar too much. What I've seen is when I go visit the FAA centers and approach controls or the military installations—we also operate military installations as well for the Department of Defense.

The integrity of the system has gotten so much better in the past decade that they don't lose the systems that often, so they don't have to rely on manual approach too often. That's probably good, because the controllers probably aren't as able to dig right into that manual stuff as they used to.

Mr. MINETA. Is there enough capacity in these private organizations and institutions you were talking about to undertake these kinds of responsibilities?

Mr. HAVENS. If you were to say, "Let's do it tomorrow and close the Academy," I'd have to say no. But if we have a controlled program like I suggest here where we bring it up to speed, I would say that within 12 months the private sector would be able to handle the load the Academy has right now.

Mr. MINETA. And what would you say in terms of say, the failure rate once they're deployed to a tower or to an en route center? Do you think there is any better than what the Academy puts out?

Mr. HAVENS. I would have to say that probably the failure rate at the facilities may be about the same, but here's the difference. What comes out of the school is going to be somebody who is ready to go to work in that facility. That in itself may make the difference in the failure rate out in the field.

We have seen instances where people have failed at the Academy and then come back through one of these institutions and gone through the program again at a less tedious pace than the Academy requires. They are able to get all the information down that they couldn't get the first time — there's an incredible amount of information put to those people in a very short period of time at the Academy. A private institution has the advantage of taking whatever time it takes for an individual to accept that information. If he has a problem on a particular area, they can concentrate on it. At the Academy, if you mess up an area, that's it. You've got one shot at it. When they have these "problems," as they call them, if you fail two of those problems in the technical section, you're out. The pressure is unbelievably intense. I've seen excellent controllers that I know were good controllers in the military go through that and bomb out at the Academy, not even make it through the Academy because the pressure was so intense, knowing that if they failed one more problem they were out and their career was over right there before it even started.

So for sure, I can tell you you're going to eliminate this tremendous failure rate at the Academy. This is a big cost thing for the taxpayers right now. You're looking at a washout rate of over 50 percent right now at the Academy, and this is very expensive. If you let private institutions do it, number one, the students are paying for it. They're going to pay to go to school. Right now, the taxpayers pay the student to go to school.

What I'm suggesting is, let's do it the other way around. It's just like going to college. We're talking about a $50,000 a year job that these people are going after. They're going to be willing to pay for that just like anybody else, just like a lawyer or an engineer; they go to college and they pay for their own education.

I'm suggesting to you that you are for sure going to eliminate that washout rate and the cost of that and the cost of putting those students through there. Now, what happens in the facility, I'm confident that the washout rate will not be any higher than it is, and I'm fairly certain that it will probably be lower.

Mr. MINETA. If all the Level 1 air traffic control towers were contracted out, do you have any idea what the savings might be?

Mr. HAVENS. I have a pretty good handle on that. That data is all available for public review, but right now the cost to the agency to run a typical Level 1 facility is over $300,000, give or take. The private sector can come in and operate that same facility for anywhere from $150,000 to $200,000, so you're looking at a very significant savings for each facility. And you multiply that by 116 in any given fiscal year and you're talking about a lot of money.

Mr. MINETA. Okay.

Mr. Gingrich?

Mr. GINGRICH. If I could ask you a couple of questions about how you operate.

You have, I believe you suggest in here, 21 operational control towers?

Mr. HAVENS. Yes.

Mr. GINGRICH. Are all of your controllers former FAA controllers?

Mr. HAVENS. Not at all. Our controllers come primarily from three different areas. We take on military controllers who are either retiring from the military or perhaps have only put in four to six years in the military, and they've been controllers in the military; they want to get on with the agency, but they want to hone their skills in the meantime. They don't want to just sit around on a roster waiting to get on. Sometimes it can be a year or two years in the hiring process. So they come to us, and we put them to work. They are on the rolls of the agency, and when the agency calls them, they go. This is a segment of our workforce that we know we're going to lose, but it's a segment that we take advantage of.

Now, the retired military people are a different story. They generally come with us after being with the military for 20 or 25 years. They are still in their 40's and they want to work another 10 or 15 years, and we put them to work. We also hire retired FAA controllers. They get out of the agency but they're not ready to hang up their shoes yet. They want to work some more air traffic control, so they come to work for us.

We have also hired some of the 1981 strikers.

Mr. GINGRICH. Do you have anybody who had not had either military or FAA controller experience?

Mr. HAVENS. Yes. We had a couple of individuals whom we attempted to put through the training process ourselves, which we can do. My particular company doesn't get into the training aspect very much at all. The reason we don't is because the vehicle for it is not really there; the few individuals that we try to do it with, we did all their bookwork for them, put them through the testing, gave them the CTO examination; they passed that, then they have to be on position for six months in one of our facilities and then be evaluated by an FAA examiner. Well, after all that procedure, time, and cost for us, that individual turns right around and goes to work for the FAA.

Mr. GINGRICH. That happened to you?

Mr. HAVENS. Yes, it did. After about two times of that——

Mr. GINGRICH. When that happened, did the FAA require them to go to Oklahoma City?

Mr. HAVENS. Yes, they did. They had to go back through Oklahoma City again.

Mr. GINGRICH. Okay.

Now, did they make it through Oklahoma City?

Mr. HAVENS. Yes.

Mr. GINGRICH. If you don't mind my asking, how do your salary scales compare with FAA for a similar tower?

Mr. HAVENS. Our salaries really have quite a range to them right now. At the facilities we have, probably a third of them are what we call "wage determination facilities." In other words, the Labor Department has told us that because this was an FAA facility prior to taking it over and because we were going to use more than five personnel at that facility, we had to pay comparable FAA wages, so we do. And they set that at GS–10, Step 2. So in those particular facilities we may start a controller out higher than the FAA would. They will bring a guy out of the academy as a GS–7, then he goes to GS–9. Well, we start everybody at GS–10, Step 2 in that particular facility.

We have others that are not wage determination facilities, and the pay scales there are probably 30 percent less than what the FAA would pay.

We have found that to be no problem. We have people standing in line.

Mr. GINGRICH. What is the relative cost of running one of your towers compared to a comparable Government tower?

Mr. HAVENS. As I alluded to earlier, our costs range anywhere from $125,000 to $200,000, depending on the nature of the facility. If it's a wage determination facility, it's going to be the higher dollar cost. However, even with that, even when we're paying the same basic pay structure as the FAA, we're still able to save substantial monies.

Your next question probably is, how do you do that? Well, number one, we don't have the very liberal vacation policies that the FAA has. We don't have management personnel—I'm not putting down the FAA on the way they set up their management system, but we don't have a need for non-operational management personnel, so we don't have any of those. In other words, our Chief Controller works in the tower.

Mr. GINGRICH. So fewer total personnel?

Mr. HAVENS. Yes, we have fewer personnel than they have, so we are able to pay the same and still——

Mr. GINGRICH. Now, as I understand it, Britain also has some privately-run controllings, is that correct?

Mr. HAVENS. Yes, they do. They have a very substantial private air traffic control system in Europe, particularly in the United Kingdom. It's been very successful.

Mr. GINGRICH. Are there any other countries that you know of that have private systems like that?

Mr. HAVENS. The entire Middle East is basically run by private air traffic control——

Mr. GINGRICH. Contracted by the government?

Mr. HAVENS [continuing]. Mostly contracted from this country.

Mr. GINGRICH. On page 4 you talk about some alternative ways of learning. Can you mention for the record, or submit later if it's easier, some examples of places that train people in controlling?

Mr. HAVENS. There's a company in New York on Long Island that is doing this right now. They're gearing up with full simulator capability.

Mr. GINGRICH. Where do people get a job when they graduate from that company?

Mr. HAVENS. Hopefully, they'll get a job with the FAA. What that particular company is trying to do right now—it was started by a retired Regional Director in the Northeast Region—what they are attempting to do now is to convince the FAA that they are able to train people equally as well as the academy, and then contract with the FAA to let those people go directly to work in their facilities, as I alluded to earlier. That's what they're trying to do. Right now they're offering their training programs to their students, but there's no guarantee that that student is going to have a vehicle to get into the agency. He may still have to go through the Academy.

Mr. GINGRICH. Okay.

Mr. HAVENS. There is also one in Valdosta, Georgia that does a similar thing.

Mr. GINGRICH. Thank you. Your testimony is very useful.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Havens. I appreciate your taking the time to present us with your testimony.

Mr. HAVENS. Thank you.

[Mr. Havens' prepared testimony follows:]

PREPARED TESTIMONY BY GARRY R. HAVENS, PRESIDENT, MIDWEST AIR TRAFFIC CONTROL SERVICE, INC.

My statement briefly highlights my qualifications, then addresses the summary of issues in the order listed, and finally explores additional recommendations.

I have served as Chief Executive Officer of Midwest Air Traffic Control Service Inc. for the past ten years. We are the largest air traffic control firm in the United States with twenty one operational control towers currently on line from coast to coast. In addition to handling over two million landings and takeoffs per year, we also design and build control towers, and provide full maintenance service for ATC, Weather, and Navigational equipment.

Some of the key changes that could improve the structure and authority of the agency can be incorporated or initiated under current Civil Service rules. Three areas of adjustment that could generate immediate results are: budgetary control changes, compensation add ons, and altered hiring procedures.

Under the current system each region annually submits and gets approved an operating budget from the central FAA budget office. If a region has additional funding requirements during the year, it has no immediate effective mechanism to seek additional funding.

By the same token if extra funds are available in a particular region, there is no centralized mechanism to ensure best utilization throughout the F.A.A of that surplus.

Under the present system all funds allocated to a specific area must stay in that area. For example, funds cannot be transferred from construction to operations without congressional approval, even if a surplus exists in the former. In fact, any surpluses must be returned to the U.S Treasury.

I am not proposing drastically changing the current system, because it would probably cause more confusion than it's worth. But I am suggesting a mechanism that would cut through much of the red tape and time delays characteristic of the present system and at the same time encourage efficient use of funds. That mechanism would be a surplus fund for each region generated by unused by appropriated money from which the region could use as it sees fit. Also, a portion of these regional surpluses would be returned to a central FAA wide fund that, after approval from the director, could be utilized by a particular region that needs additional moneys.

A simple mechanism such as this would speed up needed projects, or such things as implementation of additional manning by as much as a year and at the save thousands of man hours spent processing appropriation requests that are now required.

The cost of living issue and incentive pay at busy facilities deserves immediate attention. I believe these issues can be addressed and alleviated without violating current civil servant procedures.

The military already provides such incentives as cost of living adjustments and extra pay for critical jobs.

Basically, cost of living adjustments need to be figured for each demographical area deemed higher that normal. " Normal " should be determined by comparing several " average " communities. Do not average all areas because the very high areas skew the arithmetic mean higher than it should be.

Incentive pay could and should be added in facilities requiring a high skill and expertise level. Management should be included in any increases given.

One of the most important functions I believe the FAA is approaching in a totally inappropriate and costly manner is the function of hiring and training controllers. Literally millions of dollars are spent annually to screen and test applicants, and then millions more are spent to train the successful applicants of which only about thirty percent (30%) ever make it. There must be a better way and there is . Let the private sector handle it.

There are private organizations and colleges already on line that offer complete training at the same level of the FAA Academy. Its backwards to pay for the process of professional training if you don't have to. That's why colleges and technical institutions exist.

Imagine how much easier and cheaper it would be for the FAA to turn over hiring to each region at the hands on level. Each region would accept into their facilities only applicants already trained at an accredited academic institution, just like any other company, thereby circumventing the initial testing and Academy requirements.

I know for a fact from my own investigation, people will pay for their own training and be standing in line for a job. High FAA wages will always insure a constant and sufficient supply of candidates in the pipe line.

To insure proper and sufficient developmental training is actually available, the FAA would probably want to contract with appropriate private organizations to supply certain numbers of developmentals within given time frames and then pay a small fee to the contractor after each developmental is checked out. Once the pipeline is established, the FAA Academy would then be scaled down and eventually discontinued.

There is no question this will work. It is already being done on a limited scale with excellent results.

I would like to comment on a few of the other areas mentioned for discussion, and then add some additional comments.

I can tell you first hand that decentralization authority in the areas of policy and procedure is resulting in an undesirable lack of uniformity between regions. Policy and operating procedures should be established from a central authority. Also, the management concept within each region could be improved in certain areas.

Under the current set up, the centers and satellite approach controls have total autonomy from one another. I have witnessed squabbles over coordination, airspace, ect - between the managers which actually result in one or the other using their authority and power to unnecessarily burden the other facility. This should never happen as air safety and expeditions movement can be adversely affected. The solution is to appoint a mediator to settle facility disputes with discipline authority if evidence of deliberate, irresponsible acts are perpetrated by one facility or another. It would seem that an experienced commercial pilot might best fill this role since he would have experience with both types of facilities.

I believe the FAA should probably remain under the authority of the D.O.T..

There are some areas that the FAA should have more autonomy, however, like actual procedural setting and rule making. But, like most agencies they probably need a policy and financial watchdog to prevent biased decisions to protect or perpetuate their own interest.

The issue of the trust fund is a closed one from any angle approached as far as I'm concerned. The purpose of the fund is clearly for nationwide airport expansion, upkeep, and improvement - and not a bail out for the FAA. The point here is that even though this money has not been spent for its intended purpose, it should have been and still should.

I have one additional comment which has to do with the somewhat overlooked but very important privatization program of level 1 VFR control towers. My firm, Midwest Air Traffic Control Service, has been and is now successfully operating the majority of the former FAA control towers that are contracted out.

This conversion process is one of the most significant and important programs the FAA has undertaken to alleviate their immediate manpower shortages and save millions of tax payer dollars at the same time. The program was approved and funded through the Airport and Airways act of 1982 and has been on line for six years. However, there are now only sixteen (16) control towers operating as FAA contract control towers thus far.

There are one hundred sixteen (116) level I towers still being operated by the FAA, which currently requires a full eight percent (8%) of their total available manpower. Although they would benefit greatly by moving this segment of controllers into busier level II through level V. facilities, where they are desperately needed, they seem to be making the level I Tower transition at a snails pace. In fact, it seems to me that the program has been deliberately put on the back burner.

It has only been through applied pressure from our congressional contacts and through the A.A.A.E. (American Association of Airport Executives), that the program has survived the last few years.

The FAA's Plans and Programs Division has recently drafted a proposed " Low Activity (Level 1) VFR Control Tower Plan " dated April 11, 1988. I would encourage your committee to review it. Basically it calls for an " orderly " ten year transition with only about ten more facilities contracted through 1990.

They say, quote " this approach will allow for verification of program results and compilation of additional data to be used to review, revise, and refine the program as necessary. It will assure proper management and program continuity for a plan of this magnitude and complexity." Unquote. I heard this same rhetoric for going slow in 1982. The fact is this program is not all that complex and there is already a vast amount of verifiable data expounding the programs success.

All the mechanisms in the private sector are already on line and waiting for the FAA to get going. This entire program could and should be fully on line in no more than five years. I strongly suggest that this committee make this recommendation to the FAA. The D.O.T fully supports my position on speeding up their transition plan of Level I Towers to the private sector.

TESTIMONY BY:

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Mr. MINETA. At this time I would like to call Mr. Wesley A. Pietrasik, President, U.S. Express, Plymouth, Massachusetts.

TESTIMONY OF WESLEY A. PIETRASIK, PRESIDENT, U.S. EXPRESS, PLYMOUTH, MA, ACCOMPANIED BY REYNALD CRETE, PRESIDENT, CASH AIR, INC., LAWRENCE, MA

Mr. PIETRASIK. Thank you, Mr. Chairman. My name is Wesley Pietrasik.

Mr. MINETA. Your statement will be made a part of the record, so if we could get to your recommendations, that would help us.

Mr. PIETRASIK. I will keep it quite brief. I realize it's quite late; we've been here all day.

My colleague to my right, like myself, is from the private sector. His name is Reynald Crete. He is basically in the same position as we are, having the same aircraft that has gone down recently and having the same exposure and experience with the FAA.

In today's context, this is basically a scenario of an "evil empire," not in some remote dictatorship but intricately woven into the very fiber of our society. It is administered by an unfettered emperor, comprised of independent fiefdoms who, in the name of Congress and the public, daily usurps power only for self-gratification, control without accountability, without any regard for standards of national uniformity. For example, where 9,000 violations in one region are unacceptable, 4 are so numerous as to warrant an immediate and emergency revocation, violative of the Administrative Procedures Act, due process, search and seizure, the Bill of Attainder provisions of the U.S. Constitution, its own FAR's, its own internal handbook and policies, and Order 2150.3.

The FAA at the regional level is operated on an "old boys' club," put in the position of judge and prosecutor, dispensing pecuniary and punitive remedies and sanctions at the whim and the unfettered discretion of the Administrator, who will think nothing of extorting and illegally seizing company documents and then illegally withholding these material documents so that the certificate holder is unable to defend itself, while making patently false and fraudulent allegations.

It is a "boys' club" with propitious memory lapses, propitious inability to read maintenance logs, AD compliance logs and records, and vested disability to interpret its FAR's and follow its guidelines and orders. It is an agency which without any accountability had forgotten its mandate to promote aviation, dedicated more to self-gratification than to air safety.

Finally, it is an agency which has become comatose many years ago and whose time has come to have a brain transplant.

Is this the way that Congress intended the FAA to operate in today's society? I for one never waived my Constitutional rights of due process, search and seizure, or prohibition against blacklist—which is the Bill of Attainder—by being part of aviation. I don't believe a Congress existed which would support a thesis that alienation of these rights solely by affiliation with aviation is warranted for the greater good of the public.

What brings us all here today is that on March 3rd, 1988, U.S. Express was served with an Emergency Order of Revocation. The

FAA Administrator through his acting Regional Counsel determined ex parte, without notice, hearing, due process, and in summary manner, that the conduct of U.S. Express was so egregious and so unsafe that in the name of Congress, public interest and air safety required immediate action of revocation.

Those are excellent buzzwords; unfortunately, they mean very little.

The facts are listed in the appendix. I will not go through them. To summarize these facts, at least the first scenario, these allegations were based on nine months of open dialogue with the FAA and "musical chairs" of four POI's, which are Principal Operations Inspectors; three Flight Standards District Office managers; and two Regional Chiefs, a platitude of requests for patience by FAA based on training of new people, lost documents, destroyed documents, utter inability to respond to air carrier's daily operations, false and fraudulent allegations, utter inability to read maintenance logs and records, a propensity for coverup, and a total disinterest for public safety.

The history of this matter has been one of continual requests for patience from the FAA and one of extreme patience on our part. It is particularly reprehensible that while U.S. Express showed extreme patience, these same grounds were used to violate U.S. Express on counts 1 and 2 of the Order of Revocation.

Case in point. Between July of 1987 and September of 1987, four requests submitted by U.S. Express to FSDO-61—which, again, is the Flight Standards District Office—for approval of a certain individual for the position of Chief Pilot and the Director of Operations, met with pleas for patience from the FAA. Note that the date is July of 1987.

Flight Standards District Office requested U.S. Express to be patient when they misplaced U.S. Express manuals back in May of 1987.

Flight Standards District Office 61 was unable to find operational specs, operational manuals, training manuals, maintenance program manuals, and the minimum equipment list for two of our aircraft, Seneca and Navajo. FSDO claimed that they were never received from Plymouth Air Services, which is another name for U.S. Express.

If I may digress for a little bit, I'm sure that each and every one of us—or some of us, at least our fathers—dealing with FSDO at a regional level is very much like being a father, trying to educate your children. It is a situation where FSDO says, "No, we never got it; no, we're no longer responsible; no, we're not responsible," and you have to prove to them at each and every junction that in fact they have gotten those documents.

A Director of Maintenance eventually found these missing documents at a desk of a former departed inspector in late August. The response was, "must have fallen through the cracks."

A fifth request from Mr. Bevilacqua, who was our Director of Maintenance, visiting the FSDO office in early September to meet with Inspectors Ouimette and Robichaud— this was the first verbal request for Inspectors Ouimette and Robichaud to allow Mr. Bevilacqua to hold temporary titles of Director of Operations and Director of Maintenance. The response was, "Be patient."

Five months later, Mr. Bevilacqua's request to hold dual titles as Director of Maintenance and Director of Operations was denied, on February 5th, 1988, by Inspector Keyes.

Nine months later, and to this date, still no approval or denial on our petition for Chief Pilot and Director of Operations.

How many things have to slip through the cracks before someone in the FAA or the Region or in FSDO ever takes notice?

Count 2 is another glaring example, to basically digress a little bit from the presentation here. Count 2 deals with FAA's own interpretation of its regulations. It is based on two telephone calls to one of the inspectors. It is a telephone call from my Director of Maintenance; it is a telephone call from myself, and a subsequent interpretation of one of the FAR's.

We followed that interpretation with a letter which was served on FSDO-61 on February 11th, 1988. After the crash of the aircraft, another inspector violates our company, U.S. Express, for relying on that very same interpretation.

This, unfortunately, is the modus operandi of FSDO operations.

In the meantime, by the way, prior to the occurrence of the accident and until March 3rd when it was revoked based on that particular allegation and on the violation where the company had relied on the February 11th letter, there was no notice from FAA, from FSDO, from the Regional Counsel, from the Assistant Regional Counsel and from the Region itself that in any way that letter—that there was any dispute on the letter.

Now, maybe somewhere in the gray areas of the FAR there is a requirement that certificate holders have an ESP power for dealing with Federal public servants. Or was it just that on March 3rd, after the accident, it was considered now to be more expedient when grasping at straws to develop enough allegations against U.S. Express to warrant not sending a letter of investigation, but proceeding to a "no notice required" emergency revocation?

Although this is not a complete record of all the times that we have been asked to exhibit patience or have been misled or misinformed by the FAA, I believe it is enough to make my point at this time.

I will also summarize Scenario Number 3 a bit. It deals with the maintenance counts, what transpired.

Immediately after the incident, FAA inspectors picked up all the maintenance logs and AD records from one of the maintenance facilities on the morning of the 23rd in Hyannis. At no time did any of these inspectors notify the company that they had these records in their possession; instead, they demanded U.S. Express prove that the turbochargers were overhauled, and at that point were advised that the pilot had requested to carry these very records on board and that effectively we could not prove any of the requests from the FAA until such records were produced or they were fished out of the water.

The existence of these records was knowingly and willfully concealed and covered up and withheld by FSDO and Region until April 4th, the night before the hearing before the NTSB, when a certain insurance adjustor, a Mr. George McDevitt, was first able to recover them. Office managers should have made them available to Mr. Bevilacqua, our Director of Maintenance, during his several visits to FAA, FSDO, and regional offices.

Upon receiving the aircraft maintenance pouch from the insurance adjustor, it was easily ascertainable that, one, in fact, the turbochargers had been overhauled; number two, engine air filters which were required by AV to be performed and changed every 500 hours in fact were clearly documented in the aircraft AD record book on the first page.

FAA Inspector McLaughlin also violated U.S. Express by not having a 100-hour inspection performed during the month of October, even though he was provided with a copy of a maintenance invoice from one of the third-party maintenance facilities for a 100-hour annual inspection performed during the month of October in the amount of $6,000-plus, and that was the 100-hour inspection at issue.

Inspector McLaughlin was also provided with a signed maintenance release on 2469M, which was the aircraft, on October 16th which, under the FAR, is de facto conclusive evidence that a 100-hour inspection was performed.

It is difficult to understand why the FAA has such a hard time understanding documents which comply with these mandated FAR's. With the submission of these 13 documents to Flight Standards District Office showing compliance with turbocharger overhauls, air filter AD requirements completed, transponder checked under 91.172, and completion of the 100-hour inspection in October, 1987, it is a grand total of six times that this irrefutable documentation had been provided to the FAA. It is extremely perplexing. This same information and documentation, excluding maintenance logs and AD's which the FAA already had in its possession, was provided to Inspector McLaughlin on February 23rd while he was supposedly performing a routine base inspection that had previously been scheduled for the 24th. Copies of these documents were provided to him on February 23rd, and therefore were in the possession on February 24th in the Region Office while he was recommending revocation against U.S. Express.

Notwithstanding, these records clearly demonstrate FSDO–61's inability to read and comprehend 2469M maintenance AD compliance records which were in their possession at the time.

While it only took the FAA one day to review our records and begin revocation, it has already been four months since that day that the 18 known false charges have been documented to the FAA on five previous occasions.

We ask ourselves, what does all this have to do with safety? And this is what this is all about today.

Safety, like anything else—and I've listened a great deal over here—has a price tag to it. No one has mentioned it, but it has a price tag. Safety does not require additional legislation and does not need additional FAR's. It has a price tag, as I've indicated. That price, whether it is the time wasted on the FAA or the time pursuing additional legislation or additional FAR's, has to come out of somewhere. It will come out of the maintenance and the program.

The problem with FSDO, especially up in the New England Region, is that they are extremely ineffective. The question has been asked today, should the FAA be independent? We are not looking for an independent or a dependent FAA. We are looking for an effective FAA, an FAA that is equitable, an FAA that is trustworthy, an FAA that does not have an incestuous relationship with some 121-affiliated carriers.

Legislation itself will not make the system any safer. America's record in aviation safety is not the result of the FAA or its regulations, but the professional men and women dedicated to aviation. You can legislate that something be signed off, but you can't make the mechanic perform the service. Unfortunately in today's environment, the FAA is more interested in the paper chain of the safety equation than it is actually interested in the maintenance of the aircraft.

So the safety is the result, really, of the carrier's response to the traveling public's almost sacrosanct demand for safety and the dictates of that marketplace.

Safety, especially in the New England Region, will not be improved until such time as the fiefdom power of those agencies is eliminated.

The other issue that has been broached today is, is the FAA itself for safety? Well, I think that particular issue goes along with the other question that was raised early in the morning, is the system safe?

Subsequent to the crash of our airport at Bridgeport, on final approach into Bridgeport Airport which at that time was a non-controlled airport, the company did a very extensive investigation. We believe that the primary airports and the primary control of those airports is extremely safe. On the other hand, secondary airports are not safe. The FAA is not necessarily here for safety. They are cloaked in lethargy; they are cloaked in slowness to respond. The FAA is for the FAA. It allows unairworthy aircraft to operate; a case in point is the very aircraft that we operated. Some 14 years ago, the man sitting to my right discovered a flaw in that very aircraft. Since 14 years ago, 126 accidents had been reported on this aircraft. Nothing much has been done about it. The aircraft has been certified by the FAA; it has been operated by the FAA. There are no extensive AD's, and any AD on that particular problem that has been discovered some 14 years ago has not been cured.

The NTSB has made certain recommendations. Those recommendations have not been followed to this day by the FAA. One hundred and twenty-six reported accidents—is the FAA for safety? Well, not speaking for the whole FAA but at least for the New England Region, the weather in New England is marginal. Fifty-five percent of the time you're flying in IFR weather, which means cloudy and so on. Part 135 pilots have to be checked out—should be checked out—under IFR conditions.

At FSDO-61, it is their peculiar habit not to give check rides under IFR conditions or cloudy conditions. They will only simulate IFR conditions in sunny weather, so they themselves will not fly in IFR conditions.

Fifty percent of the FAA in the New England Region has been employed by the FAA less than two years, and the inspectors have less experience than the people they are sent to check. As a case in point, it is very common for a 700-hour FAA inspector, an inspector that could not operate a 135 flight, to be checking out a 3,000-hour pilot. In our case, a 2,000-hour Principal Operations Inspector failed to approve two 10,000-hour-plus pilots as chief pilots, one with 10,000 hours in 707 and DC-10 aircraft.

Our recommendations: The unfettered power of the Administrator should be fettered, and "fettered" is not the same as a propeller being "feathered." He should be shackled. The Administrator must be held accountable through the DOT to Congress, directly to the air carrier community, and at least with some sort of a board of governors. The Administrator must be required to respond to certificate holders' correspondence and requests within the same time limitations as are binding on the carriers. It is foolhardy to run a business and expect to wait and be patient for nine months to get a chief pilot. It is impossible to run a business when you have four POI's in five months and to have your documentation, your training manuals, your operational manuals lost on you. It is more ludicrous to have to send your Director of Maintenance up to FSDO-61, look through the desks of the FAA, to find your own documentation and manuals.

The Administrator must be required to function under national standards of uniformity so as to preclude gross injustices where 9,000 violations are acceptable in one region and 4 violations are so numerous as to warrant immediate and emergency action of revocation.

National standards must be published. Currently, the Administrator operates under the principle of in camera. There is no single operator who knows the standards of the Administrator's interpretations of those standards or FAR's, which change on a daily basis.

The Administrator's or FSDO's interpretation today is a potential violation tomorrow.

Secondly, Administrator Order 2150.3 must be adopted as a standard nationally.

Lastly, the Administrator, as in the Federal Judiciary's requirements for extraordinary relief, should be compelled to demonstrate a probability of success in his case before issuing any order of emergency action, which destroys a company's livelihood. This is only done to 135 operators; this is not done to 121 operators. The rationale behind such requirements mandated in the Federal Judiciary recognizes the potential abuses in a system which allows the administrative office to absolutely destroy a defendant's livelihood without the necessary and convincing proof supporting the Administrator's allegations.

Accordingly, the Administrator's proof should be carefully weighed and analyzed and should not be allowed in the name of Congress to destroy a company's livelihood with empty cliches of public interest. This is not the intent of Congress.

Thank you, Mr. Chairman.

Mr. Mineta. Thank you.

This hearing is called on the basis of reorganization of the FAA. Under any kind of reorganization of the FAA, how would the result be any different for you?

Mr. Pietrasik. I believe what needs to be done with the FAA is not necessarily to reorganize it and issue new legislation. I think the legislation is fine. I think the FAR's are fine. I think what needs to be done is that the FAA needs to be educated on those FAR's. They need to be educated on their internal handbooks, and they need to be educated on Order 2150.3, which was issued by Administrator Langbon, I believe, some five or six years ago.

The major problem that we have had with the FAA is that we conducted our own investigation while the NTSB was doing theirs. NTSB has not come up with a conclusion. We issued a 25-page report which the FAA to this day has not answered nor responded to, nor has the NTSB. We found fault with the system. We found fault with the FAA, and this is the reason I am saying that the FAA is not for safety per se. Safety is a vacuous term; let's put dollar and cents amounts to it and let's put some definition to what safety is.

Our aircraft went down on final approach into Bridgeport for one of two reasons. One is the flaw in the aircraft, which was discovered 14 years ago, or number two is that the FAA flew it into the ocean, into Long Island Sound. Wrong wind headings were given to the pilots—having listened to the tapes, wrong wind headings were given to the pilots. A wrong barometric setting was given to the pilots. No wind shear conditions, which existed—this was in the middle of a lull, in the middle of a storm, the same night that three aircraft went down as the storm went across the northeast, one in New Jersey, one in Bridgeport, Connecticut, and one somewhere in Virginia, an American Airlines commuter.

The two pilots had a total time of 16,000 hours, two ATP's, no passengers on board. It was a ferry flight, a Part 91 flight.

The FAA, after having listened to all that, and the barometric pressures were given wrongly—we listened to the tapes. It is clear what happened on that particular flight. But having said all that, the pilots walked away from the crash. They lived and survived. The FAA for one and a half hours failed to notify the Coast Guard. The pilots died of exhaustion, of temperature exposure. They dropped.

The last thing on the tape, Mr. Chairman, was from the controller of the FAA at New York TRACON indicating that he had a primary reading one-half mile from the end of the runway. You would think that after an hour and a half he would have notified the Coast Guard and advised them that he had a primary reading one-half mile from the end of the runway.

Now, unfortunately, the weather given to these pilots was Long Island weather. He never advised them. In fog, the pilots waited with the aircraft and died of exposure after an hour and a half. We found these things—we found fault with the FAA.

I don't believe that any legislation will cure that. I believe that you have excellent people in Washington. I think you have excellent people at the top, and I think you have people who mean to do well. What needs to be done is to educate the people who have been on the job for less than two years. You cannot have a situation where a 700-hour pilot is trying to do a check ride with a 10,000-hour pilot. That 700-hour pilot or the instructor couldn't even work for a 135 operation.

Mr. **Mineta**. Mr. Zeigler, do you have any questions?

Mr. **Zeigler**. No questions, Mr. Chairman.

Mr. **Mineta**. Anything further?

[No response.]

Mr. **Mineta**. All right. Thank you very, very much—I'm sorry, would you pronounce your name again?

Mr. **Pietrasik**. It is Pietrasik.

Mr. **Mineta**. Pietrasik. Mr. Pietrasik.

[Mr. Pietrasik's prepared statement follows:]

PREPARED STATEMENT OF WESLEY A. PIETRASIK, U.S. EXPRESS

TO THE HONORABLE MEMBERS OF CONGRESS

It is a pleasure to be invited to testify before this Committee on Issues of "Improving the Effectiveness of the Federal Aviation Administration."

In today's context, this is a scenario of the "Evil Empire", not in some remote dictatorship, but intricately woven into the very fiber of our society, administered by an unfettered Emperor, comprising of independent fiefdoms, and who in the name of Congress and the Public daily usurps power only for self gratification, control without accountability, without any regard for standards and national uniformity (where 9000 violations in one region are acceptable and 4 are so numerous as to warrant an immediate and emergency revocation), the Administrative Procedures Act, Due Process, Search and Seisure, and the Bill of Attainder provisions of the US Constitution, the FAR's, and its own Internal Handbook, Policy and Order 2150.3

It is an "Old Boys" club put in the position of judge, prosecutor, and jury dispensing pecuniary and punitive remedies and sanctions at the whim and unfettered discretion of the Administrator, who will think nothing of extorting, and illegally seizing Company documents, and then illegally withholding these material documents so the certificate holder is unable to defend itself, while making patently false and fraudulent allegations.

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It is an Agency which without any accountability had forgotten its mandate to Promote Aviation, dedicated more to self gratification than air safety.

It is an Agency which became comatose many years ago and whose time has come for a brain transplant.

Is this the way Congress intended the FAA to operate? I for one, never waived my Constitutional Rights of Due Process, Search and Seisure, or prohibition against Blacklist (Bill of Attainder) by being a part of aviation. And I don't believe a Congress existed which would support a thesis that alienation of these rights solely by affiliation with aviation is warranted for the greater good of the public.

On March 3, 1988, US Express was served with an Emergency Order of Revocation. The FAA Adminisrator through his Acting Regional Counsel, determined ex parte, without notice, hearing, due process, and in Summary manner, that the conduct of US Express was so egregious and so unsafe that in the name of Congress public interest and air safety required immediate action of revocation.

The facts are listed in the Appendix. To summerize these facts, allegations were based on nine months of open diologue with the FAA, a musical chairs of

four(4) POIs(Principle Operations Inspector),

three(3) Flight Standards District Office managers, and

two(2) Regional Chiefs,

a platitude of requests for patience by the FAA based on trining of new people, lost documents, destroyed documents, utter inability to respond to air carrier's daily operations, false and fraudulent allegations, utter inability to read maintenance logs and records, a propensity for cover-up, and total disinterest for public safety.

The history of this matter has been one of continual requests for patience from the FAA and one of extreme patience on our part. It is particularly reprehensible that while USX showed extreme patience, these same grounds were used to violate USX in Counts 1 and 2 of a Four(4) count Order of Revocation. Count 4 has now been removed by NTSB Board as warranted. A case in point:

(1) Between July 1987 and September 1987, four(4) requests submitted by USX to FSDO-61 for approval of Mr. McCurdy for the position of Chief Pilot and Dir. of Operations, meet with pleas of patience from the FAA.

(2) Flight Standards District Office requests USX be PATIENT when they misplaced USX Manuals back in May of 87.

(3) Flight Standards District Office - 61 unable to find Ops Manual, Training Manual,Maintenance Program Manual and M.E.L for Seneca and Navajo. FSDO claimed that they never roceived them from Plymouth Air Service.

(4) George Bevilacqua, Dir of Maintenance for USX, finds missing manuals in FSDO-61 office, at desk of former departed Inspectors desk in late August. "Must have fallen through the cracks"

(5) Fifth request from Mr. Bevilacqua visiting FSDO office in early September to meet with Inspectors Ouimette & Robichaud. First verbal request,with Inspectors Ouimette and Robichaud, to allow George Bevilacqua hold temporary dual titles of Dir. of Operations and Dir. of Maintenance. BE PATIENT.

(6) FSDO requests we BE PATIENT as we request "in writing" October 1, 87,for temporary approval of George Bevilacqua as Dir. of Maint. and Dir. of Operations, while we patiently awaited full approval from the Region for McCurdy to be Chief Pilot and Dir. of Operations. Inspector Ouimette "I'll walk it through Region. we see no problems. Two(2) weeks."

(7) Phone call to POI Ouimette on or about Oct. 15,87, by George Bevilacqua,
"What is the status of my Walk Thru approval? BE PATIENT.

(8) After two weeks of being patient, Mr. Bevilacqua called Region to find out the status of his WALK THRU approval. Region advised it had no request for George Bevilacqua to act in any position.

(9) Mr. Bevilacqua called POI Ouimette, told him Region knows nothing of his written or verbal requests. Answer from POI Ouimette, "No one told you to call Region about this matter, this will cause problems, I told you I would take care of this matter, BE PATIENT.

(10) FIVE (5) months later,George Bevilacqua's request to hold dual titles of Dir. of Maint. and Dir. of Ops. is denied on February 5,88, by Inspector Chris Keys.

(11) Nine (9) months later, no approval or denial of Clark McCurdy as Chief Pilot/ Dir. of Operations. Mr. McCurdy last resume' update was given to USX on Feb. 19, 88, when Mr. McCurdy made a visit to our office inquiring as to the status of our deviation request. No answer has been received to this very day.

How many things have to "SLIP THRU THE CRACKS", before someone takes notice?

Count 2 of Administrators Order of Revocation demonstrates another not uncommon FAA propensity for inability and unaccoutability.

(1) On or about Feb. 3,88, Mr. Bevilacqua phoned Inspector Robichaud to inquire about the legality of taking 2469M off USX 135 certificate due to upcoming 1400 hr. T.B.O. on engines and turbo-chargers.

On Feb. 09,88, I sent a FAX copy to the Regional office, addressed to Insp. Robichaud, asking for a 15 hr. T.B.O extension on 2469M.

This was immediatelly denied by Insp. Robichaud at 8:30 a.m. on Feb. 10, 88., by a phone call to myself. (Note immediate denial response from FAA.)

On Feb. 10th, I phoned Insp. Robichaud for a further clarification and understanding of Robichaud conversation with Mr. Bevilacqua.

Feb. 11th - USX hand delivered a letter to FSDO-61 addressed to Inspector Robichaud. This letter very clearly took 2469M OFF the USX 135 certificate and clearly stated that 2469M would now be managed by USX for the exclusive use and under the control and watch of a Boston Bank, carrying cnecelled checks instead of newspapers, as per Inspector Robichaud's example, THE BOSTON GLOBE.

Since this was a confirming letter of our prior conversation this follow-up letter also stated,that in deferance to his work load, no response was necessary, and we intended to effectuate operating 2469M immediately under Part 91 rules.

On Mr. Bevilacqua's first visit to FSDO-61, after March 3rd, Acting Office Manager C. Davison, acknowledged receiving and discussing the Feb. 11th letter with his entire Inspector Staff. He also stated that a copy of the Feb.11th letter was hand delivered by an Inspector to Regional Counsel, Asst. Regional Counsel, Keith [illegible], also attested to the fact that "Someone" in Region Counsel, received a copy of USXs Feb. 11th letter, on Feb.11,1988.

Evidently both FSDO-61 and Regional Counsel saw nothing to disagree about the contents of USX Feb. 11th letter. Certainly nothing that required an "EMERGENCY SAFETY MEASURE" to provide immediate protection to the public on Feb. 11, 1988, through February 15 when the aircraft was parked in the hanger, on February 16 through February 19 when it was operating, or on February 19th, when the aircraft was ramp checked in Boston by Inspector DeCosta of FSDO-61.

Nor was it on Friday morning at aprox. 9a.m., when Insp. DeCosta phoned FSDO-61 to speak with USX's P.O.I Keyes. Inspector Keyes testified that Insp. DeCosta reported that he had checked 2469M, its pilot, aircraft contents and contents of Bank of Boston van. Insp. DeCostas' written report states, "The pilot reported that this was a Part 91 flight". Evidently, Inspector Keyes, FSDO-61, or Regional Counsel, still had no problem with this being a Part 91 flight. If they had, it was their responsibility to notify USX IMMEDIATELY. No one phoned USX, sent a letter, or Faxed a copy of any disagreement with Inspector Robichauds' ruling.

Inspector Keyes testified before NTSB Judge Fowler, that it was only after 14 days, on Feb.24,88, that he decided "On his own", while meeting with Regional Counsel Keith May and other Regional Heads, that in his opinion, USX should be violated for conforming to Inspector Robichauds' interpretation of Part 91.

Inspector Keyes however never notified USX in any manner of his "OPION" of Feb.24th.

It should be noted, that although Inspector Keys never notified USX of his opinion, he had time to send two letters.

(1) Dated Feb. 16th, stating that Inspectors from FSDO-61 would conduct a base inspection in accordance with (FAR 135.73). There is no mention of any disagreement with Inspector Robichauds interpretation of Part 91, and no "Emergency Action" necessary to protect the general public as of this date.

(2) Dated Feb. 23,88, regarding Operations manual suggested wording change, there being no mention of his upcoming "OPINION", and no Emergency existing on Feb.23rd either.

Acting FSDO-61 Office Manager said he had no input regarding Inspector Keys allegations against USX. It has always been our opinion, that it was the function of the "Office manager" to oversee and advise employees under their control. It appears in our dealings with FSDO-61 Inspectors, that none of them, including past and present Acting Office Managers have the slightest understanding as to the contents of ORDER (2150.3), which in section 401. PLANNING AND INITIATING THE INVESTIGATION in part states:

> "In developing such a plan, the inspector should carry out early and CLOSE coordination with SUPERVISORS, legal counsel, and SUPPORTING OFFICES."

Maybe somewhere in the "GREY AREAS" of the FARs, there is a requirement that Certificate Holders have "ESP" Powers for dealing with Federal Public Servants.

Or was it considered to now be more expedient, after the crash, when grasping at straws to develope enough allegations against USX to warrant not sending a Letter of Investigation, but proceeding to a "NO NOTICE REQUIRED" EMERGENCY REVOCATION.

Although this is not a complete record of ALL the times we have been asked to exhibit "Patience" or have been misled or misinformed by the FAA, I believe it is enough to make my point.

It is reprehensible that such decisions are made in a vacume by nonaccountable individuals who after the fact never really had the information or understood the information they had. A case in point is exemplified by the following testimony.

Inspectors Keys, McLaughlin and Whittimore picked up all the maintence log books and AD record from Nantucket Aviation the morning of Feb.23 at Hyannis according to John Calhoun.
At no time did any of these inspectors notify USX that they had these records in their possesion. Instead, they asked Mr. Bevilacqua to prove to them that the turbo chargers were overhauled after the first 1400 hours. Bevilacqua advised them he could only prove that and other requests for information, if he had the aircraft maintenance logs. He was asked me if he knew where 2469M maints. records were. In response, he advised them it was his understanding that the pilot had requested to carry them aboard the aircraft on the flight of Feb. 19th incase he was ramp checked again. Evidently, Inspector DeCosta admonished Mr. Nucifero(the pilot) for not having a complete set of maintenance logs onboard the aircraft on Feb.18th/19th a.m.

The existance of these records was knowingly and willfully concealed, and covered up and then withheld by FSDO and Region until April 4th, the night before the NTSB hearing when insurance adjuster Geaorge McDevitt was first able to recover them. Office Manager should have made them available to Mr. Bevilacqua during his several office visits to the both FAA FSDO and Regional offices.

Upon receiving 69M maint.pouch from insurance adjuster George McDevitt the night of April 4th, Mr. Bevilacqua was able to very easily ascertain that:

(1) the turbo chargers had been overhauled back in 1983 at 1399.0 hrs and that the "YELLOW TAGS" were located in the orginal set of Piper Log Books.

(2) The engine AIR FILTERS which are required by AD to be changed every 500 hrs. infact were clearly documented in 2469M AD RECORD BOOK on the first (1st)page. and signed by John Calhoun of Nantucket Aviation that it was P/C/W at the proper time by Yankee Aviation Service of Plymouth, Mass. on their October 100 hr/Annual Inspection.

(3) Inspector McLaughlin also violated USX for not having a 100 hr. inspection performed during the month of October, even though he was provided with (1) A copy of maint. invoive from Yankee Aviation Services for a 100hr./Annual Inspection performed during the month of October in the amount of $6000.00 plus.

(4) Inspector McLaughlin was also provided with a signed MAINT.RELEASE in 2469M Flight/Maint. Log on Oct.16th, which under FAR's is defacto conclusive evidence that a 100 hr. inspection was performed by Yankee Av.per work order number.

All these logs and copies of documents, invoices, records were in the possesion of the above named inspectors when they met with Regional counsel on Feb.24th, and according to their testimony before the NTSB JUDGE FOWLER, who deemed them all as "EXPERTS", it was their recommendation that USX CERTIFICATE be revoked.

It is difficult to understand why the FAA has such a hard time understanding documents which comply with those mandated by FARs. With the submission of these thirteen (13) documents to Flight Standards District Office, showing compliance with turbo-charger overhauls, air filter AD requirements completed, compliance with 91:172 transponder check, and completion of 100 hr./annual inspection in October of 87, by Yankee Aviation Services in Plymouth along with a Flight & Maint. Log Book sign off by George Bevilacqua. Dir. of Maint. of US Express, it is a grand total of six (6) times that this irrefutable documentation had been provided to the FAA.

It is extremely perplexing, that this same information and documentation, excluding Maintenance Logs and ADs which he already had in his possession, was provided to Inspector McLaughlin, on Feb.23,1988, while he was supposedly performing a routine base inspection that had previously scheduled for Feb. 24. 1988. Copies of these documents were provided to him on Feb.23, by USX, and therefore were in his possession on Feb. 24th in the Regions office, while he was recommending revocation action against USX for not complying with maintenance requirements.

Notwithstanding. these records clearly demonstrate FSDO-61 Acting Office Manager Fuller and Inspector Kevin P McLaughlins' inability to read and comprehend 2469M maintenance and AD compliance records which were in their posession since Feb. 23,88, and as provided to that office on several occassion and again on May 25,88. These documents prove that the FAA made knowingingly false allegations in their Count 3 regarding (a) the overhaul of turbochargers, which was accomplished in 1983 at 1399.0 hrs, (b) the compliance with, AD 84-26-02, and the DOUBLE record of compliance,(c) the completion of a 100hr./Annual Inspection in October of 87 by Yankee Aviation Services of Plymouth.

While it took the FAA only ONE DAY (Feb. 24,88) to review USX records and begin revocation action, it has already been FOUR (4) MONTHS since that date,the 18 "knowingly False " charges have been documented to the FAA on five (5) previous occassions, by USX.

RECOMMENDATIONS

Unfettered powers of the Administrator must be fettered.

The Administrator must be held accountable through the DOT to the Congress, and directly to the air carrier community.

The Administrator must be required to interpret timely its FAR's with binding consequences.

The Administrator must be required to respond to certificate holders correspondence and requests within the same time limitations binding air carriers.

The Administrator must be required to function under national standards and uniformity so as to preclude gross injustices where 9000 violations are acceptable in one region and 4 violations are so numerous to warrant immediate and emergency action of revocation.

National standards must be made public. Currently the Administrator operates in "camera". There is no single operator which knows the standards or Administrator's interpretations of those standards or FAR's which change on a daily basis.

Administrator's Order 2150.3 must be addopted as a standard nationally.

The Administrator, as in the Federal Judiciary's requirements for extraordinary relief, should be compelled to demonstrate a probability of success in his case before issuing an Emergency Order which destroys a Company's livelyhood. The rationale behind such requirement mandated in the Federal Judiciary recognizes the potential abuses in a system which allows the Administartive Office to absolutely destroy a defendant's livelyhood without the necessary and convincing proof supporting Administrator's allegations. Accordingly, Administrator's proofs should be carefully weighed and analyzed, and should not be allowed, in the name of Congress, to destroy Company's livelyhood with empty cliche's of public interest. This was not the intent of Congress.

Respectfully Submitted,

Wesley A. Pietrasik

APPENDIX

FACTS

Company had an eight(8) year history of accident free, safe and FAA continously monitored operations.

In the last four(4) months, the Company, its aircraft, and its records had been inspected not less than five(5) times. No safety violations or problems have ever existed.

On December 1, 1987, the Company was certificated by the FAA to operate aircraft configured for 10 passenger or more. This authorization required several months of close scrutiny by the FAA, and based on same, on December 1, 1987, the Company was deemed SAFE and NO EMERGENCY EXISTED.

On or about February 4, 1988, Mr. Bevilacqua first phoned Principal Maintenance Inspector, Mr. Robichaud about the possibility of US Express taking aircraft 2469M off its 135 certificate and dedicating and using subject aircraft in Part 91 operations for a Boston Bank.

On February 10, 1988, Mr. Pietrasik phoned Mr. Robichaud as follow up to his conversation with Mr. Bevilacqua, requesting further clarification as to legal operation of subject aircraft in specified part 91 operations as complying with FAR's.

On February 11, 1988, Company hand delivered to the FAA Fligt Safety District Office, a letter addressed to Mr. Robichaud, restating these two(2) previous conversations, and Company's understanding of FAA's position on compliant Part 91 operations.

Company waited a reasonable amount of time (five days) till the close of business day on February 16, 1988 before commencing assigned operations for the Bank of Boston.

On February 19, 1988, at 2:30 am 2469H was ramp checked by an FAA inspector in Boston, inspecting that the aircraft met all FAA operational requirements of record keeping, flight crew qualifications, and aircraft airworthiness which were found to be compliant with the FAA regulations. The Inspector also inspected and confirmed directly with Bank couriers the contents tendered, and confirmed that subject aircraft was carrying only specified cancelled checks for and under the direction and control of assigned Bank. NO SAFETY VIOLATIONS WERE FOUND and NO EMERGENCY EXISTED.

On February 19, 1988, at 11:25 pm, US Express aircraft 2469H goes off New York Tracon terminal radar for Bridgeport, Conn. while making second ILS approach to runway 06. Tracon checks by phone with BusEx WX observer as to visual sighting of landing at BDG. Reported WX at BDG-800 ft. 2 miles vis. New York Tracon waited aprox. one to one and a half hours before alerting search and rescue authorities.

FAA Inspectors under the guise of "trying to help the Company" visited US Express premises on February 23, 1988 for a one(1) day base inspection.

The Inspectors at no time disclosed that the Company was being investigated for possible violations which could result in the revocation of its certificate. To the contrary, the Company was advised that the inspection was a routine inspection rescheduled from February 24, 1988, due to the crash of February 19, 1988. No Letter of Investigation, as required by Order 2150.3 was ever issued to USX.

Company internal investigation shows the pilots appeared to have emerged safely from the downed aircraft.

Company's findings made to the FAA on February 29, 1988, are critical of FAA's handling of the flight and subsequent rescue operations in the following areas (See 50 question request for additional information from the FAA by US EXPRESS. Discussed with Inspector Whittemore on Feb. 24, 88, who encouraged us to send our completed copy to FSDO-61, which was mailed on Feb.29th.):

(1) Insufficient weather reporting by Bridgeport FSS.

(2) Incorrect wind direction given to crew by Tracon-NY

(3) Incorrect barometric pressure at destination airport.

(4) Insufficent attempt of alerting and assisting search and rescue . Coast Guard no notified until aprox. one to one and a half hours after 69M went off radar scope.

(5) Complicity between the FAA Administrators and Piper Aircraft in ignoring NTSB recomendations to completely redesign the fiberglass nose section and foward baggage door.

(6) Bridgeport FSS destroying all weather charts, maps, etc. of Feb. 19th,and 20th, when they knew it was their duty and responsibility to save them due to an accident at their airport.

(7) When questioned why the Coast Guard began searching at the opposite side of the airport from the last known position (on tapes, controller states he had a "Primary Target" one-half mile from the end of runway), New York Tracon supervisor Kelly responded "Search and Rescue is not FAA responsibility". Coast Guard reported the water temperature in Long Island Sound during the month of February at approximatelly 34 degrees. Maximum survival time under said conditions at one(1) to one and one-half (1 1/2) hours.

As of March 3, 1988, and currently, neither the FAA or the NTSB has determined the cause of the accident, and has made no allegations that US Express, its management, maintenance practices or flight crews were a contributing factor to the cause of the accident. The Administrator has not even alleged any nexus between alleged violations and the crash.

As of March 3, 1988, and currently, neither the FAA FSDO or FAA Regional Office at Burlington has responded by telephone, letter, or FAX stating any disagreement with Company's letter of February 11, 1988, and Company's intent to remove 2469M from its certificate and assigning same to exclusive Part 91 use as specified in the letter.

On March 3, 1988, FAA Administrator through his Acting Regional Counsel issues an Emergency Order of Revocation based on empty phrases and patently false allegations which the Inspectors knew or should have known to be false based on their inspection of February 23, 1988.

The ATTITUDE of USX towards the FAA has been a history of extreme patience.

(1) Patiently waited months for approval of new manuals due to FAA shortage of inspectors.

(2) Patiently waited more months while newly hired inspectors were sent to the Academy in Oklahoma.

(3) Patiently waited over 9 months for the FAA to either approve or disapprove of Clark McCurdy as Chief Pilot/Dir. of Operations. See attached copy of resume'of this 10.000 hr. pilot.

(4) Patiently waited 6 days to allow FAA to respond if they had any questions to our hand delivered letter of Feb. 11th regarding our understanding of Inspector Robichaud interpretation of legal operation under Part 91 rules.

(5) Patiently waited aprox. 7 months for the FAA to first find lost M.E.L and then make suggested changes.

(6) Dutifully notified Inspector Malara that two former employees of USX, Mr. & Mrs. Reinhardt, one of which is currently an FAA Inspector at FSDO-61, had removed company 135 records of their training. A confirming letter was later sent on July 23, 87, formally restating the akward position the FAA said they would not take action against, namely, the requirement of USX to keep trainging records of all 135 pilot who were formerly in their employ, for a period of 12 months after terminating employment. Even thou the FAA had a copy of this letter in their USX files, they ignored the advice given to USX by one of there inspectors, and on page 5, Count 4, violated USX for not haveing copies of the Reinhardt's records in our training files. This again is a FSDO-61 indictment of itself.

Mr. MINETA. Mr. Crete, did you have a statement to make also?

Mr. CRETE. I apologize, sir. I came down yesterday at the urging of Mr. Pietrasik, and I'm certainly not prepared to testify before you today.

I would like to comment that I've had a similar situation. I still have a company called Cash Air. We operated the same make and model of aircraft, the Piper Seneca, and just about a year ago one of the airplanes that we were operating destroyed itself in the air and ended up in the Dorchester neighborhood of the city of Boston and subsequently burned three houses down. The pilot was killed. The airplane was flying newspapers.

Again, as FAA did to Mr. Pietrasik's company, two weeks after the crash on a Friday afternoon, unannounced, without telling—without making any comments that the company was under investigation, they did an "Emergency Order of Revocation." Again, trying to find the reasons for the Order of Revocation, they were convoluted charges. They were absolutely—50 percent of the document was absolute lies and the other 50 percent of the document were matters that FAA's Regional Counsel didn't know how to interpret from their own regulations.

Subsequent to the accident we conducted our own investigation and found that the nose baggage compartment door of the airplane opened. I have reason to believe that it's an identical situation that happened to Mr. Pietrasik's airplane. It's an identical situation to what happened in Stigler, Oklahoma in 1985.

FAA was notified by the National Transportation Safety Board 100 days prior to the June 26th crash to issue an emergency airworthiness directive on the nose baggage doors of these airplanes. FAA failed to do that. As a result of their failure to do that, the Boston accident occurred.

Again, as a failure of FAA's ability to respond to a recommendation of the National Transportation Safety Board, the Bridgeport accident occurred.

It just seems that whenever an accident occurs to a 135 operator, it's a lot easier for FAA to simply come along and convolute an Emergency Order of Revocation and put you out of business and quiet you. Last year on this day I had $2 million worth of work to do. I was operating seven airplanes and I employed 25 people. Today I don't operate any airplanes. I don't employ anyone, and thank God I have been able to keep peace with the banks that were financing me.

But this FAA, the way it's operated, they've got absolute disregard for the operator, an absolute abuse of power. I've come across documents—I've made them available to you; there's a pretty good white paper that was written by a fellow by the name of Larry Smith on a company called the Go Group in Tucson, Arizona. Again, they were revoked identically on convoluted charges.

It's an area in the operation of the FAA that needs to be addressed. I don't know if it can be addressed by this committee or not; however, it desperately needs to be addressed.

[Materials submitted by Mr. Crete follow:]

FAA ABUSE OF POWER: A CASE STUDY

The Go Group Unlimited, Tucson, Arizona

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May 1988

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I. INTRODUCTION[1]

On Friday, May 3, 1985, the Federal Aviation Administration, without warning of any sort, served on three operating and affiliated companies of the Go Group Unlimited at Tucson, Arizona, an emergency order of revocation of their FAA certificates. This immediately shut down all operations. One company was a private charter carrier, one licensed as a common carrier, one a repair station that serviced the other two. One hundred and forty-three persons lost their jobs as a result.

This whitepaper explains and demonstrates in detail why the affair was a flagrant abuse of government power. It details: how FAA officials violated fundamental concepts of fairness and due process; how they violated the letter and spirit of standing agency directives; how the agency itself allows such abuses to occur because it is in violation of its own charter, the Federal Aviation Act of 1958 (FA Act), as amended, and in wholesale and deliberate violation of the Administrative Procedure Act (APA), and Constitution.

II. COMPANY HISTORY

In May 1985 The Go Group Unlimited was a holding company for, among others: 1) Go Leasing, Inc., holder of an FAA Part 125 private carriage operating certificate; 2) Royal American Airways, Inc., holder of a Part 121 air carrier operating certificate; and 3) Go Air, Inc., holder of a Part 145 authorized repair station certificate.

The Go Group was owned and headed by Ronald J. Clark, 45. It owned or controlled some 22 British Vickers Viscount 4-engine turbo-prop aircraft, a popular airliner of the 1950s and 60s. Seven of these, in executive configuration, that is, fitted out with leather easy chairs, sofas, special galleys, etc., were acquired from major American corporations and used by Go Leasing. The balance, acquired from various airlines, were in airline passenger configuration, three used by Royal American, the rest held in stock for refurbishing or spare parts.

Go Leasing (and predecessor entities) specialized in chartering to entertainment groups, from Lawrence Welk to Rock bands. Such a group would take a given airplane, with its own crew of captain, first officer and flight attendant, as if it were its own, and use it for several months on the road during promotion and concert tours, sometimes even for a year or more.[2] Stage equipment would follow in semi-trailer trucks, some with two trucks and identical sets, leap-frogging one another for speed and efficiency.

After coming under Clark's control in 1981, Royal American made varied use of its certificate. It flew fill-in routes for other carriers like Air Florida, and under contract to American and Caribbean casinos and resort hotels. For a short time in 1981-82 it operated (under subcontract to Go Air) as a scheduled carrier between L.A. and Las Vegas.

Go Air, although authorized to serve the general public, principally serviced and maintained aircraft operated by the other two, and stocked parts for the Viscount.

The three companies operated with the same upper management from a 10-acre facility at Tucson International Airport, with a satellite facility at Ft. Lauderdale, Florida.

In 1969 Clark was a corporate pilot in his late 20s when he saw its potential for the entertainment industry and bought his first executive Viscount. It was an immediate success and became immensely popular. Still is. The lessor provided maintenance, independent companies provided flight crews, a division then necessary under CAB rules.

Business was so good that in the mid-70s he added a world-wide DC-7 contract air-freight operation and an executive jet service. Operating from Burbank until 1980, he bought private land adjacent to Tucson Int'l Airport in which he could build equity, and moved his operations there.

About this time, in response to airline deregula-

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[1] Prepared by Lawrence B. Smith who practices law in Tucson, Ariz. Mr. Smith is an experienced pilot and first soloed an aircraft in 1945. A former FAA lawyer, in 1980 he served as a consultant to the U.S. General Accounting Office on the legal aspects of FAA enforcement. He is author of FAA **PUNITIVE CERTIFICATE SANCTIONS: THE EMPEROR WEARS NO CLOTHES; OR, HOW DO YOU PUNISH A PROPELLER?**, 14 Transp. L.J. 59-100 (1985). EXH G. Emperor shows that certificate penalties have never had any basis in law and details how FAA and predecessor agencies have engaged in a coverup of that fact. A key means of that has been FAA wholesale violation of the Administrative Procedure Act, failing to publish policies and promulgate basic enforcement rules. A shorter version, more suited for laymen, may be found in Smith, **FAA: Illegal disciplinarian?**, Aviation Digest, Sep. 1987, at 26. EXH F.

[2] Promotional materials are attached as EXH A.

tion, which obviated the need for an expensive CAB supplemental carrier certificate for large aircraft charter, FAA created the Part 125 private contract carrier certificate.[3] This put leasing, maintenance, crew training and operations under one roof, which improved safety and efficiency for both FAA and operator. As the largest single leasing outfit, Clark's served as a model for the consultant advising FAA on its creation.

Key to safe, reliable and economical operation of large aircraft, especially those out of production, is having readily available the multitude of spare parts, appliances and accessories, necessary for aircraft and engines, including the specialized fixtures and tooling required to repair and install them. And mechanics and inspectors experienced with the particular type of aircraft. As his business grew, Clark bought up large stocks of spares, e.g., generators, flap motors, landing gears, tooling and such, from, among others, United Airlines, which at one time operated a large fleet of Viscounts. This gave him the largest stock of Viscount spares in the world, and an almost complete in-house capability to maintain, repair and rebuild these aircraft and their engines. He brought over from Great Britain several expert Viscount mechanics.

Even today, more than thirty years since coming into service, the Viscount is an economical, comfortable and safe airliner. At today's prices, if needed, one can be remanufactured, including engines, for about $1.5 million dollars. And on short to medium haul routes it will do the work of a new aircraft costing $8 millions or more.[4]

With airline deregulation in 1978, and entrepreneurs starting new airlines, some saw its economic attractiveness. Since Clark by then had a virtual monopoly in North America on spare parts and tooling, several came to him and took options if he'd buy up used planes around the world, refurbish them, and provide heavy maintenance backup. This he did, borrowing heavily from banks. This is how Royal American was created. A Texas oilman, with three Viscounts, started a small regional airline flying out of Texarkana. Clark was instrumental in helping him obtain his Part 121 air carrier certificate, and preparing the aircraft, a complex and lengthy task. But after a year the oilman didn't see profit on the horizon so sold aircraft and certificate to Clark.

At the same time, the 1981 recession hit, leaving him holding the bag at the banks with aircraft the would-be airline operators couldn't pay for. (By now he owned, all told, 22.) He tried to retrieve the situation by starting a discount airline from Los Angeles to Las Vegas. This failed. Largely due to the main players in that market cutting their prices to his, lowering them further when he did, finally driving him out. In early 1982 he placed Go Air, Inc., the working financial entity to which Royal American with its certificate was contracted, in Chapter 11. Because of bank notes he'd endorsed, he later was compelled to do that himself.

In the interim he built Go Leasing's business back up and put Royal American to work in Florida and the Caribbean. (Neither of which was in bankruptcy.) At the time he was shut down by the emergency order, Go Leasing's monthly gross was climbing towards $1 million dollars.

III. PRE-EMERGENCY SCENARIO

In December 1984 Clark landed a contract with Club Med, the huge international vacation resort organization. It needed to charter air transportation to take its members from Miami to its resort at Punta Cana in the Dominican Republic because regular air service was so inconvenient. In the remote northeast corner of the island of Hispaniola (Haiti is the west half), the resort is several hours by bus over bad roads from Santo Domingo's commercial airport. Club Med had built its own airstrip at Punta Cana which the Viscount could easily use.

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[3] Beginning with the Civil Aeronautics Act of 1938, which ushered in economic regulation and subsidization of airlines, to operate any large aircraft (over 12,500 lbs), if not a regular carrier, one had to have a supplemental certificate, which were quite expensive. After WW-II, with cheap war-surplus aircraft, and later, airliners replaced by turbo-props and pure jets, it became profitable to lease them to university athletic teams, for example, travel clubs and other private groups.

Separate entities had to provide crews, otherwise the operation would be classed as a de facto supplemental carrier -- subject to injunction and penalties for lack of a proper certificate. FAA and CAB were virtually paranoid about subterfuge, certainly with some justification, prompted by several accidents, most prominent of which was the Wichita State football team crash in Colorado while the pilot was sightseeing up a dead-end canyon.

[4] Of 440 Viscounts, the most popular turbo-prop ever built, about 60 remain active.

Clark started service using Royal American Airways with its Part 121 certificate. Club Med set flight times, mostly Friday, Saturday and Sunday. The Viscounts would take members starting their vacations down from Miami, bring back those winding them up, making several trips a weekend. All the company had to do was have the aircraft on-ramp ready to go at the assigned times.

First trip went out December 22nd. A few weekends later, towards the middle of January, 1985, Clark decided to switch the service to Go Leasing. One of the latter's planes was convertible from exec to airline passenger. He did this for a compelling reason. Part 121, designed for scheduled airline operation, has far more requirements than Part 125 private charter, although FAA insists the latter equals 121 standards of safety. Among them is the need for flight following, that is, a dispatcher at company headquarters receives regular reports from which he can track an aircraft's location.

Punta Cana's somewhat primitive location, however, created a serious problem. On departure, to relay time off, an employee had to drive five miles to the resort where there was only one telephone and telex, often tied up with Club Med business. Some flights were almost to Miami before the dispatcher knew if they'd gotten off the ground.

Another problem existed. Club Med built the airport with the idea of giving it to the Domican government. It hadn't been formally accepted. (A few months later, it was.) So technically Royal American could not land there.

Concerned these were serious infractions of 121 rules, which could lead to violation charges, but with no such Part 125 requirements, Clark decided to make the switch. The contract was private charter for Club Med members only (there was no other reason for anyone to go to Punta Cana), the flights were only a minor part of a vacation package, no one was selling tickets, and it seemed clear in the opinion of company counsel Edward Coleman that Go Leasing wouldn't be violating the 125 "holding out" rule.[5]

Principal operations inspector for Go Group, Richard Julian, learning of the switch, expressed his opinion in a January '85 letter that the contract violated that rule. Clark and Coleman promptly scheduled a meeting with FAA Western-Pacific Region (hereafter Western Region) lawyer Richard Wittry in Los Angeles to discuss the matter. Although understanding the 121 problems, and indicating no concern about Part 125 causing any effect on air safety, Wittry took Julian's position. However, he invited Clark to submit a request for a deviation, or exemption, from the holding out rule. Mr. Coleman promptly did, sending it to Mr. Wittry.

Clark continued using Go Leasing. Not long after the Wittry conference, he got word Western Region was going to conduct a "special" inspection of the three companies. From Feb. 20, 1985, up to eight FAA inspectors started an intensive investigation of company books and records for aircraft maintenance, crew training, and the like. Five weeks later, Mar. 27, they finished. During this time, Clark received no word from Wittry on the deviation, and Go Leasing carried several thousand Club Med members.

IV. EMERGENCY REVOCATION

Five weeks later, on Friday afternoon, May 3, two FAA inspectors arrived in Tucson and served on Clark an emergency order revoking the certificates of Go Leasing, Royal American Airways and Go Air.[6] Patched through by an FAA control tower, he reached Western Regional counsel DeWitte T. Lawson, Jr., who had signed the order, at home. Among other things, Lawson made an off-the-cuff remark, "I've got you this time!" (We will come back to this.)

Next day, Saturday, Clark shut down all operations. This stranded several hundred Club Med members for whom its management had to rush around chartering aircraft. Likewise, three entertainment groups in mid-tour, which left several Viscounts grounded at airports far from Tucson.

Within the week Clark laid off most of his employees. He kept 20 key people to support the 10 Viscounts he could lease out to other operators to generate revenue. For reasons that will become clear, about September, he finally had to let all of these people go too. One hundred and forty-three persons lost their livelihoods as a result of the FAA action, not to mention inconvenience to customers and destruction of an excellent reputation.

V. SPECIAL PERSPECTIVE

In considering this matter, several things should be underscored:

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[5] 14 CFR § 125.11(b). In its rules, FAA fails to define the term. With deregulation it is something of an anachronism since it makes safety regulation dependent upon an obsolete and arbitrary economic distinction, rather than the true nature and extent of the service being provided.

[6] Many suspect that serving emergency orders on Friday afternoons is a deliberate ploy to make it difficult for the operator's attorneys to get to a federal court where they might get a temporary restraining order against the FAA emergency order.

(1) In the entire 15-year history of his operations, operations involving large, complex aircraft, the Viscounts, the DC-7s, and executive jets, different crews flying in and out of strange airports all over the United States and the world, and running the repair stations that serviced them, Clark had an absolutely perfect safety record, no accidents, not even an incident like an engine fire or a crew running an aircraft off the end of a runway;

(2) Nor did he or his extensive operations have any record of violations -- none whatsoever;[7]

(3) None of the violations alleged in the emergency order arose because of complaint by the public or others, or from an incident involving any operation; all were dug up strictly by looking at records (excepting, of course, the Club Med charges), some of which went back several years.

(4) No charge even intimated there'd been any falsification of records, any attempt to cover up a failure to follow regulations or proper operational or maintenance procedures;

(5) During the period January 1, 1984, right up to the start of the special inspection, of dozens of surveillance reports filed by principal maintenance, operations and avionics inspectors,[8] 97.6% were satisfactory, 2.4% unsatisfactory (the only two grades), the latter discrepancies invariably corrected by the next inspection;[9]

(6) No charge alleged that any of the three companies or their personnel had in any manner prior to the special inspection, or at any time, after request by the principal inspectors, or having it pointed out, failed or refused to correct any deficiency or change any questioned procedure.

(7) During the five-week inspection, in the few instances when the team leader advised of a discrepancy,[10] management immediately and vigorously corrected it.[11]

(8) At no time after the January meeting with Wittry and submission of the request for a deviation from the Part 125 holding out rule did Lawson, Wittry, or any FAA official, orally, or in writing, so much as hint that certificate action (or any kind of action) would be in-

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[7] About 1983, when principal inspectors alleged they'd found two violations, Clark, in compromise, submitted two checks of $500 each as civil penalties. As Mr. Wittry testified at the Go Leasing hearing, these were never cashed, no higher sum was ever sought, nor were these alleged violations forwarded to the U.S. Attorney for processing. Wittry just sat on them for almost two years. And in any event, had these matters been settled, FAA, although they try, cannot have it both ways: it is FAA policy that "payment of a civil penalty is not an admission of guilt."

[8] The Go Group, beyond doubt, was as well surveilled as any operation in the country.

[9] These reports were obtained after a suit was filed in U.S. District Court; that suit was dismissed for lack of subject matter jurisdiction.

[10] Principal inspectors are not members of a special inspection team. Part of it's purpose is to see how well they are surveilling the operator.

[11] Two examples should suffice: (1) The team advised that bench equipment used to test generator output was overdue annual calibration. This meant that any generator tested after that due date was technically not airworthy. A Royal American Viscount, with one such generator, was then at Freeport, Bahamas, waiting to return casino guests. Clark immediately grounded it, chartered another plane to get the passengers the 50 miles back to Florida, then chartered another to fly a properly tested generator, with mechanic, out to Freeport. The suspect generator was working properly, it was calibrated by a hand meter when installed, the cockpit instruments showed proper output, and the aircraft, of course, had three other generators. Cost of the affair: approximately $10,000.

(2) Earlier, two experienced flight attendants had been hired for Royal American from an eastern carrier which used other types of aircraft. Although given training in all other emergency procedures on the Viscount, the company's chief flight attendant incorrectly assumed that since they had been certified on the other carrier in using an evacuation chute it wouldn't be necessary to do that on the Viscount. When informed of this, Clark immediately grounded both women, and the next morning, because a plane and extra packed chute were available, had them pop and slide down the chute. Cost: about $300 to have the chute repacked. (This is somewhat like having them climb a stepladder next to a Boeing 737, then doing the same next to a DC-9.)

stituted for continuing to fly the Club Med members with Go Leasing.[12]

(9) At no time from the start of the special inspection, February 20, until May 3, 1985, ten weeks, did any FAA official, with the exceptions noted in footnote 11, although both team and principal inspectors knew that Go Leasing was carrying hundreds of Club Med members every weekend, and Royal American hundreds of Casino guests, tell management that any aircraft was unairworthy or flight crew member not qualified, and ask that it or they be grounded.

One should also bear in mind while reading this, and especially the analysis of charges that follows, that the complaint against FAA's abuses breaks down into, among others, these categories:

(1) Use of the emergency power, which instantly shut down the three companies (to their certain destruction) without any hearing on whether there was an immediate threat to the safety of the public, was arbitrary and capricious, and grossly violated FAA directives on its use.

(2) As already noted, the failure to warn that action would be taken unless Go Leasing ceased its Club Med flights, was a violation of common sense, basic decency, fairness and due process.

(3) FAA directives require that during a special inspection important discrepancies which might constitute an immediate threat to air safety be immediately passed on to the operator; that afterwards the team's report go to the principal inspectors who are then given 60 days to work with the operator to implement necessary corrective action, and also to give management an opportunity to mitigate or rebut any claim of violation. FAA Western Region officials deliberately violated these directives, so that even had there been a discrepancy that posed a threat to air safety, the Go Group was never given an opportunity to clear it up and thus obviate any need for the emergency.

(4) FAA has absolutely no legal authority to (a) impose certificate suspension or revocation as a penalty for a violation, or (b) cause the trial of such an offense to be tried before the National Transportation Safety Board with one-man administrative law judge trial, rather than in United States District Court where the certificate holder is guaranteed the right to "demand" trial by jury.[13]

(5) Of the half-dozen enforcement policies used against the three companies, FAA, as required by the Administrative Procedure Act, has neither published them in the Federal Register, nor promulgated them as rules through APA notice and comment procedures. For that failure, in any single instance, the APA requires that the case be dismissed.

It should also be noted, for reasons which will be explained later, that three weeks before May 3, Clark shut down Royal American Airways. Two of its three aircraft, with full approval of the principal inspectors, were transferred to Go Leasing's 125 certificate (so much for any claim they were unairworthy); the third was due for heavy maintenance and not immediately useable, and also kept on the 121 certificate to keep it viable. For a number of reasons, Royal American could not have been restarted without FAA approval, so how could it have possibly been a threat to airsafety?

Go Air, the repair station, employed about 70 mechanics and others. It was doing no work for the public, only maintaining the Viscounts. Any such work could have been accomplished, and signed off for, by these licensed A&P (Aircraft and Powerplant) mechanics individually or as employees of either carrier. No mechanic was ever charged with a violation. Nothing they were doing could possibly have constituted an immediate threat to airsafety and justified an emergency.

The purpose of using the emergency power and handling the matter the way FAA officials did was to punish Clark for Go Leasing's Club Med flights and, (to be explained later) as retribution for a matter that had occurred many years earlier.

VI. VIOLATIONS CHARGED

The FAA Emergency Order of Revocation combined all three companies in one document, but listed separate file numbers for each and segregated the charges. Combining them was a deliberate ploy, since even taking all the charges at face value, those listed for each company would not have justified revocation, much less an emergency. Totaling 47 pages, anyone reading the document would readily agree that operations so badly run should be shut down. The way the paragraphs and regulations are strung together (when factually they often arose from what was just one set of circumstances or act), it would appear hundreds and hundreds of violations had been committed.

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[12] On cross-examination during the Go Leasing hearing, Wittry testified that the request for a deviation should have been sent to Washington. But he never advised Clark and Coleman of that at the meeting, nor said anything when he received it.

[13] This is explained in depth in Emperor.

To understand the key reason why this list was so long, one needs to understand the basic purpose of a special inspection team: they're there to do a detailed audit; they are challenged to find anything they can; benefit of the doubt goes to FAA and they list any suspected discrepancy whatsoever. It is left to the principal inspectors to shake these down with the operator to see what they really amount to.

Upwards of 80% of the charges were simply untrue because the inspectors had the facts wrong, they were phonied up by Region officials, or absurdly de minimus, if in truth they technically constituted a violation. Any legitimate violation could have been speedily corrected and, if not, as demonstrated by the examples in note 11, the plane or crew grounded until it was.

What these officials did was deliberately violate strict agency policy that requires the special-team report to be vetted by the principal inspectors with the operator, and an opportunity given to correct any real problem. **It is patent that they bypassed this procedure because they knew they would lose many of the alleged violations, and were Clark given an opportunity to correct the real problems, or ground aircraft or crew if need be, they would have been left totally without any foundation to support revocation and use of the emergency power.**

What regional counsel DeWitte Lawson did was take the team's entire raw list of discrepancies and turn each item into a violation. What we will do here, as an overview, is sample these charges. Some are outright silly, some just plain stupid, some downright fraudulent, many completely untrue.

At the outset, one should also have a mental picture of what it is that an operator can violate. It is not just the hundreds of regulations found in the Code of Federal Regulations. The operator has long lists of conditions or specifications appended to its certificate. It has operations, maintenance and crew training manuals. Each type of aircraft, each model of engine, each particular piece of avionics equipment, will have its own manual, etc., etc. It wouldn't be unusual for dozens of feet of shelving to be necessary to hold all the three-hole notebooks required for these. Departure from any of their commands is considered a violation. Everything the operator does is covered by a manual.[14]

A. MANAGEMENT

The team criticized management, and Lawson turned it into a violation. He charged, for instance, that the "Director of Maintenance for all three organizations is held by the same person." Same for chief inspector and director of operations. And that these individduals did not work fulltime.

The former was true, the latter, only if one quibbled about what their duties were. Consider, **this arrangement had been made with the specific, written agreement of the principal inspectors!** EXH H. It explicitly agreed that that these men could fly periodly to keep up their skills and to check on maintenance in the field (several aircraft were based in Florida). The principal maintenance inspector (they show up unannounced) had expressed annoyance with the sometimes unavailability of the chief inspector and director of maintenance because they were out flying. But if that was a problem, it was the only one.[15] FAA should have **specified precisely what remedy it considered appropriate,** like having an assistant, or an agreed limit to the flying hours. Then taken action were that breached. Had there been several malfunctions or other incidents in the field, evidencing lack of supervision or inspection, the emergency power might have been appropriate. There is something Kafkaesque about charges like:

> "Go Leasing does not have enough management personnel, including the Director of Operations as to assure that its operations are conducted in accordance with . . . Part 125 . . .

Without giving a clue as to what would be "enough."

In fact, because of the principle maintenance inspector's expressed concerns, and recognition of the increased workload, in February 1985, before the special team arrived, Mr. Clark hired his former partner, Steven Birdman, who had previously run their repair station, to come back and help shape it up. Since this was where the actual maintenance and service work was done, it was where greater supervision would be the most effective.

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[14] In 1986, Eastern Airlines was charged with some 78,000 violations, which gives an idea of the dimensions of the problem. It, of course, even though stiff, was allowed to pay a civil penalty.

[15] There were excellent reasons for doing this: to see how well equipment and personnel were performing in the field; and maintain pilot currency, which they were entitled to do.

B. GO LEASING, INC.

Several alleged violations give the flavor of what was going on. One charged that because Go Leasing's operations manual contained a provision about flight engineers, and the company had none because not required on the Viscount, it was not "current." In 1979 Clark bought a French Caravelle (like a DC-9) which required one, thinking to refurbish and convert it to an executive aircraft, so included that provision when they first made up the 125 manual. He never got around to doing it, but the section just stayed in the manual.

A team inspector even testified this had nothing to do with airsafety. Two things are important to understand: (1) this manual had been fully approved by the principal inspectors (they made it plain they could've cared less about this); (2) obviously, this could have been corrected in five minutes. **BUT MANAGEMENT WAS NEVER GIVEN THE OPPORTUNITY TO DO THIS.** We think it fair to say that this charge accurately reflects the character of the entire matter.

Another allegation charged that "Go Leasing, Inc. operated their aircraft into and out of airports using over water approaches and departures which placed the aircraft beyond power-off gliding distance from shore." The problem here is that **Mr. Lawson failed to allege the place and time of any such flight where this even might have occurred, much less, that it ever did in fact occur.** It was a matter which could have easily been discovered in logbooks and confirmed by FAA control tower records. It was remarkable for an FAA lawyer to make such a shotgun allegation without any specifics -- a serious reflection on his intelligence and professionalism.

During the inspection, one inspector casually asked someone if on any trips with entertainers they'd flown into places like Miami, New York, Boston, Monterrey, California. He said, "sure." That was it. Evidently the inspector then surveyed the overwater IFR (Instrument Flight Rules) approach plates for these locations and calculated that at least one approach at each would have put the aircraft over water at an altitude and distance where it couldn't have reached land had all four engines quit. He then reported it as a violation.

Aside from the fact that no specific flight was alleged, what is so incredible about this charge is that these airports had various approaches, many of which would not have created an overwater problem. Moreover, unless one could show that it was company policy to use a given overwater approach, even though improper, and forced that upon its captains, whose licenses are at stake for rules infractions, under FAA policy such a violation would ordinarily be brought against not the carrier but the pilot who, after all, at the time had a perfect right (and obligation) to refuse the approach! To top this off, the inspector had used an erroneous Viscount glide-ratio, and in the example he gave (Monterrey, California, where no company aircraft had ever been), the Viscount would in fact have been able to reach land without power. **In other words, not only was the charge unsupported by any fact, but was based upon a false premise!**

One more for good measure:

> The Go Leasing, Inc. passenger information card in Civil Aircraft N240RC is not appropriate to that aircraft. The emergency exits are not correctly shown on the diagram and the method of operating the emergency exists [sic] are omitted.

Once again, no allegation of time or place. For good reason. The charge was true, but at what point in time? The aircraft, having come in from a tour, **was up on jacks in the hangar!** Any self-respecting FAA lawyer knows that for such a charge to be made it must be shown that it occurred while the aircraft was being "operated." Even the ALJ, a former FAA prosecutor himself with a reputation as a rubber-stamp for the agency, remarked that for all it mattered the company could have been keeping chickens in the aircraft while in the hangar!

This is another sterling example of why the policy of having the principal inspectors vet the inspection report is so necessary, and its deliberate violation by Western Region officials is so important to understanding what happened here, and why it was such a gross breach of fundamental fairness and due process.

What happened is quite simple. The aircraft in question had been purchased from an owner who'd leased it out for operation under Part 91. For various reasons his emergency cards didn't comply with Part 125 and the way Clark used and had modified the airplane. So appropriate new emergency cards had to be prepared. They were. But on coming in from a trip, a ground crew strips the aircraft of any items not bolted down, stores them, then thoroughly cleans the airplane. (Bright, shiny and scrupulously clean aircraft were Clark's trademark.) When they went to put everything back, because it had the same aircraft number on it, they inadvertantly took the emergency cards from the file for the previous owner. But no matter. As Clark testified, each aircraft just before being released to service is put through a rigorous inspection, and the improper cards would have been found then.

A victory of sorts was achieved. The ALJ did reduce revocation, which was supposedly for lack of qualifications, because he found management was not deliberately flouting any rules, to a ten-month suspension, as punishment for the violations. Prryhic.

Upholding that, and calling these, and several of their ilk, "technical infractions," NTSB also upheld two maintenance violations. Both were hotly contested, and simply involved whether certain inspections or testing of components had been acccomplished at the proper time. It wasn't that they had not been, or that there'd been an effort to avoid them. "The most serious charge against the respondent," the Board said, "is that it operated numerous commercial flights when it did not hold appropriate certificate authority." And upheld that charge for 57 flights. Other than the fact Club Med issued brochures and had a phone listing in the Yellow Pages, no one has ever explained how Clark could have known he was violating a rule that simply reads:

> No certificate holder may conduct any operation which results directly or indirectly from any person's holding out to the public to furnish transportation.[16]

Note several things: This rule is so poorly written it doesn't even say "air" transportation. What does "holding out" mean? Although FAA defines dozens and dozens of terms in FAR Part 1, and even has a definition section in Part 125 (§ 125.9), nowhere does it define that term, that is, provide any criteria, like selling tickets, competing with regular carriers, etc., so a 125 operator can gather some idea of what it means. Even Mr. Wittry, under cross-examination, agreed that "reasonable men" could disagree about the alleged infraction.

Moreover, Go Leasing wasn't holding out, Club Med was, yet it was not a party to the action. There seemed to be a general feeling that, "gee, it's so big, and it only charges $30 for a membership (what if it had charged $50?), it must be holding out." Yet, as we have noted, transportation was but a small part of a total vacation package. Who would pay a minimum of $700 just to get from Miami to Punta Cana where nothing existed but the Club Med spa?

It is also fact that all FAA enforcement manuals direct that this kind of enforcement matter, basically only a legal question, be handled by cease and desist order or, most appropriately, injunctive action in federal district court. One key document, obtained in the district court action referred to earlier, came from the principal inspectors' files and reflects their assumption that Go Leasing would be assessed a civil penalty of $57,000. EXH B. Given what happened, that would have been cheap at half the price. But in this writer's experience in reviewing hundreds of civil penalty cases while at FAA, in most regions, assuming a fairly clearcut violation, such a case could have been easily settled for $5,000 to $10,000.

Why wasn't it? Mssrs. Coleman and Smith, shortly after the shutdown, visited Lawson and asked if the company could pay a civil penalty. He made it clear that that wasn't possible, that regional Flight Standards people were too upset about the Club Med flights to agree to one.

A company with a perfect safety and violation record, doing $750,000+ per month business was shut down; 143 persons lost their jobs; it wiped out the life's work of one man, a worth of millions; not to mention impact on financial institutions which had loaned him money. For what? Improper timing of two maintenance items? Fifty-seven flights, when an FAA lawyer in the very office which prosecuted the case invited the company to apply for a deviation, which would have allowed it to continue those flights? When this same man testified reasonable men could disagree about whether the Club Med flights constituted holding out?

But the key question is why Lawson or Wittry did not write to Clark or Coleman and say, "you've sent your deviation application to the wrong place, we'll give you two weeks to get that straightened out, or we'll initiate certificate proceedings." Clark was waiting for the response. If they'd have said, "we'll shut you down if you don't stop," he'd have done it, then gone to federal court, where the case belonged, for declaratory judgment.

Why no warning? What was the real reason why Western Region officials used the emergency power so that Clark's operations were shut down before he could have his day in court? The answer later.

C. ROYAL AMERICAN AIRWAYS, INC.

The charges against Royal American, for both operations and maintenance, were much more extensive than against Go Leasing. The reason: a Part 121 air carrier, which may establish routes, schedules and sell tickets, operates under many more complex regulations than Part 125 private charter. Crew training requirements are extensive. Many aircraft components are assigned "hard time." A landing gear component might have to be replaced after 10,000 landings. A flap motor, after 5,000 hours in the air, regardless how well it might be working; to be replaced by one that is either new, overhauled to "zero time," or, for instance, pulled off another aircraft with only 4,500 hours on it, leaving another 500 hours of use. Except for engines and propellers, these same components, on the exact same aircraft, when operating on a Part 125 certificate, need only be "on condition." That is, they come off when inspection or performance shows them to be in need of repair or replacement.

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[16] 14 CFR § 125.11(b).

None of the charges against Royal American arose out of any incident during operation, any failure of equipment, any complaint from a passenger; they arose strictly from the special inspection team spending five weeks going through every record they could find in company files, or from records they claimed they couldn't find. There was no charge that record entries were improper, that required maintenance or inspections had not been performed. (And, recall the 97.6% "Satisfactory" surveillance record.)

As noted earlier, it is important to one's understanding of the draconian nature of FAA's use of the emergency power here, that three weeks before the order was served (early April), Mr. Clark had already shut down Royal American. **It was not operating, and could not have resumed doing so without FAA knowledge and cooperation.**[17] He did this mainly because two key management employees, presence of whom was specifically required by Part 121, resigned to return to larger airlines; and he accepted the criticism that more management was needed for the three companies. So rather than immediately recruit replacements, he decided to temporarily shut that one down and concentrate on Go Leasing. As noted, he'd already added more management to Go Air, the repair station.

He had no inkling, of course, of what was about to happen. Had Western Region officials warned him what they would do if he did not stop the Part 125 Club Med flights, he could have hired the necessary personnel and put that contract back with Royal American where there was no question of "holding out," since that is precisely what an aircarrier is authorized to do; then sought a deviation for the flight-following gap on departures from Punta Cana, or experimented with HF (long distance) radios to see if they could do the job. It wasn't as if he had no other options -- on the contrary. (By now the Punta Cana airport had been accepted by the authorities.)

The charges here were of the same ilk as those against Go Leasing, only more so. The most serious sounding, as will be seen, were downright fraudulent in nature. Including a half-dozen which Mr. Lawson voluntarily dropped at the start of the Royal American trial (held six-months after Go Leasing), and those which the ALJ agreed to strike or dismiss on motion, a total of 18 were dropped as patently unsupportable. Many, many more should have been. But had Western Region officials been concerned with accuracy, the resulting depletion of their list, even without vetting by principal inspectors, would left their claim of emergency unsupportable.

For example, one charge was the company lacked records for six pilots showing they had received crewmember emergency training. Also that "RAMA utilized" their services when they did not have such training. But Mr. Lawson failed to allege when that had occurred.[18] This sort of charge -- records lacking, or lack of specificity as to time and place-- was rife throughout the list. When the principal operations inspector learned of them, evidently only a few days before the emergency order was served (which he was totally unaware was planned or about to happen), he came to Tucson and went over the team's list of operational discrepancies. Obviously upset, he was heard to disparagingly remark, "these are just a bunch of allegations" (no validity).

Had the team asked, or principal inspectors not been deprived of the opportunity to vet the list, management could easily have shown in all instances where these records were in the files and why the team missed them.

One more example: "RAMA's load manifests are not complete and accurate in that they did not always contain the names of the passengers." When is "not always"? On what flight(s)? This charge had no basis, and again could have been easily clarified.

Many charges concerned maintenance, operations and crewtraining manuals, most so minor as to be silly. Yet, as with Go Leasing, all these manuals had been approved by the principal inspectors, who kept copies in their office. And corrections could have been made in minutes.

Charges that Royal American had operated several flights without a "flight release" or "load manifest" covered four pages of the emergency order. These were Miami-Ft. Lauderdale, Ft. Lauderdale-Tampa, Tampa-Houston, Houston-Tucson. Even someone of limited experience should have been able to figure out that **these were ferry flights, with only crew aboard,** to position the aircraft or take it to a base for maintenance. All were perfectly legal Part 91 flights (under which private pilots operate their aircraft). To ascertain this fact would have taken only a simple question while the team was on site, or the principal inspectors would have recognized them for what they were.

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[17] Replacements for two management personnel who had just resigned required FAA approval.

[18] The ALJ's attitude generally was, "well, you could have figured it out." Quite a task, even with a Ouija Board, given the volume of records an operator must create and keep! In any normal court situation, say, with an indictment, such failure to be specific would bring immediate dismissal.

Is "fraudulent" too strong a characterization for some charges? *Six* pages contained these sort of allegations:

> ¶ 24. RAMA's Operations Specifications required the overhaul of the duct relief valves at specific intervals.
>
> ¶ 25. The FAA inspection disclosed that the duct relief valve, Serial No. 36077, installed on aircraft No. N24V, had not been overhauled by RAMA, and that RAMA did not prepare and produce overhaul records for the valve.
>
> ¶ 26. Between about November 19, 1982 and February 20, 1985, RAMA operated aircraft Registration No. N24V, for about 976 hours without overhauling the valve.
>
> ¶ 27. The operations described in paragraph 26 above constituted operations of an aircraft in an unairworthy condition.
>
> ¶ 27.5. By reason of paragraph 24-27 above, RAMA violated FAR Sections 121.3 (e), 121.380 (b) (2), and 121.153 (a) (2).

These covered a number of other hard-time components, *e.g.*, "Between about November 2, 1982 and February 14, 1985 RAMA operated aircraft Registration No. N140RA, for about 1604.9 hours without overhauling the actuator. . . . [This] constituted operations of an aircraft in an unairworthy condition." Etc., etc.

This has to sound terrible: *900* hours of unairworthiness here, *1600* hours there. And that, of course, was by design. For perspective, note:

> (1) The remarkable length of time involved, almost *two and a half years*. Where were the principal inspectors, whose job it was -- and who in fact routinely did so -- to carefully check the same maintenance files (Kardex system) from which the team got the data for these charges?
>
> (2) That while the team was uncovering this "unairworthiness," everyone knew the company was carrying hundreds of casino and resort hotel passengers every week, much of it over water.
>
> (3) That section 605 of the FA Act authorizes any inspector to preemptorily ground any carrier aircraft for up to 5 days should he deem it unairworthy (and the operator not correct the claimed defect or voluntarily ground it until so done).[19] **Nothing of the sort was ever done.** (Recall the voluntary grounding of the Viscount at Freeport when Clark was told of the generator calibration problem.)

Why not? Because the team knew that the components had been overhauled, that the company had records showing that, and that regional headquarters was for the first time stirring a quarrel about whether those records were adequate under the rules.

The implication of Lawson's allegation that these components "had not been overhauled by RAMA, and that RAMA did not prepare and produce overhaul records," was utterly false: there *was* overhaul, there *were* records.

Here's the background. In the late 70s, Clark saw the need to stockpile spares for the Viscount, an aircraft long out of production, and whose numbers were steadily dwindling. United Air Lines had had a substantial fleet. So he purchased UAL's stockpile of spares. Before doing so, he checked with several FAA inspectors to see if there would be any problem about documentation. He was given the green light. The attitude of these inspectors was, "if it's good enough for United, it should be good enough here." **In fact, these same spares, most with zero time, were used in 1979-80 to bring the three Viscounts purchased for Royal American Airways into conformance with the Part 121 certification standards insisted upon by both FAA Western Region inspectors in Phoenix and inspectors from the Southwest Region in Dallas where the certificate was finally awarded.**

The reason for Clark's concern: When United overhauled an appliance, (and it maintained large stocks which it had to keep at stations on its route structure for immediate use in case one broke down), it would create substantial paperwork in the shop showing precisely what was done to it. At the same time, it would enter that overhaul in its computer system, and attach an FAA approved yellow tag to the item which would remain with it until installed on an aircraft, when it would then be placed in the Kardex file as evidence of that replacement and time available for its use. Which was usually zero-time-since-overhaul, "TSO," considered same as new; but sometimes it may have already been in use, and rather than overhaul, show whatever time remained on its allocation of hard-time.)[20]

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[19] 49 U.S.C. § 1425(b). The five days is to give him time to get an emergency order from the lawyers should he need it.

The problem was that after two years UAL would routinely destroy the shop's voluminous paperwork. So when Clark bought the spares the only documentation was a UAL computer printout noting each item's condition, and the tags. These tags are detailed and the item's status certified and signed off on by authorized UAL personnel. **They always have been, and are today, accepted by UAL's principal FAA inspectors as evidence of overhaul.**

These tags were similarly accepted by Royal American's principal inspectors right up to the time of the special inspection. The quarrel that regional headquarters was provoking was whether or not, lacking the detailed shop file, the tags constituted "sufficient" evidence of overhaul.[21] Lawson without ~~doubt~~ deliberatly misrepresented the issue because he knew he couldn't afford to state plainly what it was.[22] To underscore how corrupt bureaucracy can be, Lawson, to spin this theory, used as his chief (and only) witness, Rhuno Nelson, assistant to principal maintenance inspector Oscar Culp. It was Nelson who most frequently visited Tucson and made the inspections (97.6% of which were satisfactory), and who for years regularly observed and approved these same yellow tags in the Kardex file, as, of course, did Culp![23]

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[20] Once FAA makes an initial judgment of the amount of hard time, hours or landings, after which the component must be arbitrarily replaced, as experience grows, it may allow gradual increases.

[21] 14 CFR § 121.380 (b)(2) requires that: "The records of the last complete overhaul of each airframe, engine, propeller, rotor, and appliance shall be retained until the work is superceded by work of equivalent scope and detail."

[22] He and his cohorts were changing the rules by whim -- redefining what they would accept as a "record" of overhaul, and doing this without any announced national FAA policy (rule) to back it up-- then reaching back, during a period of time even before they thought it up, and charging Royal American with violating their new definition! This is why he had to resort to subterfuge in his accusations.

[23] We will come back to it, but it should be mentioned right here that shortly after all of this Culp was promoted, and Nelson was promoted. Also recall, as noted earlier, the same two aircraft about which these charges were made were transferred

It is anomalous for a government agency to routinely accept documentation like these tags, then turn around, without warning, and charge the operator with violations. It assails any concept of fairness or due process. Is "fraudulent" too strong a term for these charges?

If there's any doubt, look at these: Lawson asserted that "RAMA installed the following components on aircraft Registration Nos. N140RA and N24V," then listed five items, fuel and hydraulic pumps. He pointed out that they were purchased from "Flightspares Limited, Essex, England." He asserted that the "United Kingdom failed to issue Export Certificates on Airworthiness" for these components, and charged Royal American violated the rules by using them.

This was another after-the-fact-paperwork quarrel. Various companies overseas, Britain and elsewhere, manufacture or overhaul components for their own or American aircraft. They are sold and used by air carriers throughout the world. By treaty, the U.S. accepts British certification that any given component was properly manufactured or overhauled by an authorized company. In effect, if it's good in Britain, it's good in the U.S., and vice versa. A company like Flightspares is what is called a "stockist." It stocks the parts, but other shops do the actual work. The issue, seemingly complex, simply comes down to how much background certifying paperwork should the U.S. buyer insist on from the British stockist.

Clark'd bought such parts for several years (after all, the Viscount is British). Conscious of the import rule -- like so many, open to different interpretations -- in 1981, he contacted FAA Washington lawyers and sought their opinion. **They allowed that the paperwork he was getting was satisfactory.** As with the UAL tags, **Western Region inspectors had for several years been accepting these parts as adequately documented.**

It was absurd to charge a violation from this.[24] The documentation Lawson complained of was obtainable through the stockist. As a matter of fact, by time of trial, Clark had obtained from Flightspares all of the documentation Region was beefing about. If this was a problem, all that these

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with principal inspector approval to Go Leasing's Part 125 certificate after Royal American shut down.

[24] Once more, this was region's interpretation, not national FAA policy. One of the most persistent operator complaints about FAA enforcement (FAA and DOT audits say so) is that interpretation of rules varies so greatly between regions, even within regions.

officials had to do was make their new policy prospective: "From now on, Mr. Clark, you must supply such and such." To understand how off base these charges were, note the comment in the document we call the "Smoking Gun" memo (EXH C):

> Bob Colburn was going to look into the imported parts and try to get more information. I told him that some of the Flight Spares certificates reference incoming approved certificate numbers. He said that if RAMA had those incoming certificates and they were from the country of manufacture it may meet 21.502.
>
> /s/Rhuno J. Nelson

FAR 21.502 is the import rule Lawson claimed was violated. This memo shows how uncertain and complex the matter was, even on April 15, little more than two weeks before the emergency order of May 2. Colburn, a team member, was obviously doing his best to get all the facts. This buttresses the inescapable conclusion that the decision to proceed with these violations was not based on any real belief they were legitimate or proper, but other considerations.

We certainly do not contend there were no legitimate charges, but they were relatively few and basically minor. None were uncovered, for instance, by a rash of equipment problems (or even isolated ones), certainly the prime indicator of operator compliance. We discussed this case with three retired FAA regional counsel. All agreed that FAA inspectors can go into any operation and dig up this sort of violations. Take the charge that certain components which had been sitting on the shelf for three years had not been bench checked before installation. For the most part, these were UAL parts and had all been overhauled to "zero time". That requirement came from the company's maintenance manual. That manual, in order of importance, is considerably below the mandates of formal regulations, and operations specifications imposed at time of certification.

Not to minimize it, but it should be noted that this applied to more than 100 different appliances, each performing a different function. It was neither practical nor necessary to bench check them. In most instances this would have accomplished no more than would always be done on the aircraft itself, say, like a flap actuator, right after it was installed. Because this blanket requirement made little sense for most of the parts, the director of maintenance, at time of shutdown, was working on a sensible test and inspection plan to substitute for it.[25] The principal inspectors were aware of this and had not previously brought pressure about it, which they easily could have, nor is there any reason to believe they did so during the inspection, but the special team picked up on it as a discrepancy, and, of course, Lawson, as he did the entire list before it was vetted, carried these forward as violations.

FAA inspectors for the most part are practical men. It is fairly certain that Nelson was aware the generator calibration equipment was out of date (as shown by a readily seen tag), but winked at it. Had he been concerned about that, or the bench checking, he would have written it up in his frequent surveillance reports. Failure to do so is the best evidence of his and Culp's lack of concern.

If a certificate holder deserves to be punished, that is what the civil money fine is for. It is nonsense to suggest that Congress has ever decreed that an operator be revoked or suspended as a penalty (punishment) for these sort of violations.[26] A few hundred, or even a few thousand dollars is one thing, but destroying the livelihoods of 143 persons and a man's life's work is another.[27]

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[25] This bench checking would not have been a requirement under Part 125 operations since the same appliances could be used "on condition."

[26] This will be discussed below; it is, of course, the central theme of Emperor.

[27] As a result of publication of Mr. Smith's Sept. '87 article in Aviation Digest, a "source" sent him a copy of a DOT Inspector-General audit of the airworthiness of aircraft parts used and stocked at FAA's main aircraft support facility in Oklahoma City. EXH E. We repeat, without the UAL tag overhaul and British stockist documentation charges, FAA officials could not possibly have justified revocation, much less an emergency.

According to DOT, FAA stocks $20 millions worth of parts at OKC. The audit found that 76% of new parts lacked proper documentation to show they had come from approved manufacturers. It states: "There are no review procedures in place at the Depot or AVN to ensure that new parts come from approved manufacturers."

The audit found that 39% of overhauled parts were installed on aircraft without sufficient documentation. It says:

> In our opinion, AVN [Aviation Standards National Field Office] and the Depot are not meeting the certification/airworthiness requirements specif-

D. GO AIR, INC.

Considering the size and scope of Go Group's Viscount operations, the charges against Go Air, the repair station, quantitatively, and qualitatively, are not substantial. As noted, no charge arose out of any incident or failure of equipment during operations. Nowhere in the voluminous and detailed maintenance records which must be kept did the inspection team see even a hint that any had been "pencil whipped" (false entries). Equipment failure patterns are what usually direct FAA attention to a repair station, suspect record entries the reason for harsh and vigorous action. It must also be remembered that Go Air did not operate in a vacuum. It is included in the 97.6% satisfactory surveillance reports (remainder promptly corrected) and averaged bi-weekly principal inspector visits.

It should also be remembered that, as with Go Leasing and Royal American, no opportunity was ever given management to explain, rebut, or mitigate any of the alleged discrepancies or to take corrective action. There couldn't possibly have been an emergency situation. A repair station certificate authorizes one to hold out to the public and certify that required maintenance and inspections are accomplished on aircraft, propellers, engines, avionics, etc., whatever components FAA authorizes it to do. This then allows the customer, who may not have the shop or skills to do the work, to show FAA it is in compliance with maintenance regulations on its own equipment. Since virtually all the work Go Air was doing at that time was for in-house operations, the same A&P licensed mechanics could have stepped right out of Go Air and gone to work as independent contractors or employees of Go Leasing and Royal American. If any alleged discrepancies were serious, that is, an immediate threat to air safety, the repair station could have been suspended subject to clearing them up (or held under that threat).

Admittedly Go Air had test equipment overdue for calibration. But this is what civil penalties are for. It's a common problem, involves little or no risk: the items complained of are calibrated by other test equipment when installed, then checked against the aircraft's own gauges on run-up. (There is reason to believe the inspectors winked at the problem.)

Several of the charges involved hangar and shop condition, parts exposed to dust, serviceable items not segregated from unserviceable items, etc. The fact is the entire operation was undergoing a major reorganization. But pace had been slow. It was because of the maintenance inspector's concern about this that Clark brought back as consultant to help shape things up his former partner who'd run the shop before. It was by chance that the inspection team arrived when the project looked its worst and was getting underway. We are talking two large hangars, thousands of major and minor parts --not an overnight task. The task was well along by the time of the emergency order, and Nelson and Culp had expressed satisfaction about the progress.

The charges against Go Air were obviously used to load up on those against the other two companies in order to further bolster the appearance the emergency was justified. They show how FAA regulations can be used to exaggerate the number of violations even though only a single act is involved. For example, at certain intervals, aircraft fuel gauges had to be calibrated. This is usually done with a special test set, basically an electrical calibration device. A transmitter in the tank sends a variable signal or voltage to the cockpit gauge, depending on fuel level. The test set is hooked to that gauge and simulates the proper signals. If the gauge is off, a simple screwdriver adjustment can be made.

FAA charged that because the test-set's calibration was out-of-date Go Air "did not meet the requirements set forth in Section 145.47(a) and (b) of the Federal Aviation Regulations."[28] Subparagraph (a) simply provides that the repair station shall "have the equipment and materials necessary to efficiently perform the functions appropriate to the ratings [it] seeks." Subparagraph (b): "The station shall ensure that all inspection and test equipment is tested at regular intervals to ensure correct calibration . . ." This was the proper charge, subparagraph (a) was irrelevant: the company did have the required equipment.

Lawson then added as a separate violation, § 145.55, which requires a repair station to "provide personnel, facilities equipment and materials at least equal in quality and quantity to the standards currently required for the issue of the certificate and rating that it holds." This was meaningless.

He also added § 43.13(a), which requires that the repair station "use the tools, equipment, and test

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ied in FAA Orders and regulations. They are not ensuring that new replacement aircraft parts are acquired from approved manufacturers and that all required serviceability data for overhauled parts are properly acquired and controlled. As a result, FAA may be invalidating its airworthiness certifications and may be installing substandard parts in its aircraft.

[28] Only one aircraft was involved.

apparatus necessary to assure completion of the work in accordance with accepted industry practices." Again, meaningless. Go Air had the required apparatus, but its calibration was out of time.

As a further and separate charge, he added § 43.13(b), which requires that the work be done in such manner "that the condition of the [equipment] worked on will be at least equal to its original or properly altered condition . . . ." This charge was silly, it has no relevance to measuring fuel in a tank.[29]

To wind up, Lawson cited § 145.2(a), which provides that the repair station perform its work "in accordance with the air carrier's or commercial operator's manual." In fact, that is precisely what management had done.

This example reflects the ease with which FAA counsel can inflate charges when all that is involved is one basic act, omission or legal issue. Here, instead of *one*, which covered it, there are *five*. This is routine for FAA counsel. It has two uses: (1) as a bargaining tool -- counsel will threaten the operator with $5000 instead of $1,000-;[30] (2) to load up the charges, as was done here, to justify emergency revocation.[31]

Like other charges, the test set wasn't the real issue. Management knew that it was out of calibration, so used an alternate method, simple but time consuming: empty the tank, check its gauge and adjust as needed; fill, then ditto. This procedure, as common sense suggests, was approved by operator and manufacturer manuals, which Go Air could lawfully follow. Lawson evidently didn't agree.

The money fine is traditional and would have assured no repeats of legitimate violations. It violated any concept of fairness and due process to arbitrarily shut down the Go Group, especially without opportunity to take corrective action.

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[29] To make a charge under this rule, one would necessarily have to refer to other source material, like a manufacturer's aircraft manual. For example, suppose repair to a damaged engine cowling, but metal of a lesser thickness than that specified by the manufacturer was used. A clear violation.

[30] Maximum per violation is $1,000. 49 U.S.C. § 1471.

[31] "The revocations," according to Barbara Abels, public-affairs officer for the Western-Pacific region of the FAA, "were based on numerous alleged operation and maintenance violations." *Tucson Citizen*, May 4, 1985.

VII. VIOLATIONS OF LAW AND POLICY

A. USE OF EMERGENCY POWER

In using the emergency power, FAA officials violated agency guidelines. The special inspection ran Feb. 20 to Mar. 27. During those five weeks, in only two instances did the team tell management of discrepancies concerning aircraft or crew (Viscount grounded in the Bahamas; stewardesses who had to slide down an emergency chute). And *immediate* corrective action was taken. Another five weeks elapsed before the order, which proclaimed that "an emergency requiring immediate action exists with respect to safety in air commerce." The facts reveal the absurdity of this. During the ten weeks preceding, it was of course well-known to FAA officials that Go Leasing was carrying hundreds of Club Med members every weekend to Punta Cana, and Royal American many others. If these operations were so bad, how could they sit by and do nothing? The claim of emergency was totally and knowingly false. *It is fact* that Go Group's principal inspectors did not recommend certificate action or have the foggiest idea region officials planned to use emergency revocation. We are certain the same was true of the inspection team itself. The decision was made at the highest regional level only when those officials realized the opportunity which the long list of claimed discrepancies gave them to destroy Clark and the Go Group.

Regarding emergencies, FAA's enforcement manual provides:

> (a) Emergency suspension or revocation of a certificate should be used only as an emergency safety measure and, thus, to provide immediate protection to the public. Generally, **the longer the interval between the date of the incident and the date of the action, the more difficult it will be for the FAA to claim that an emergency exists.** Therefore, emergency actions should be **taken as soon as possible** after the date of the incident.
>
> (b) An emergency suspension or revocation should never be used for punitive reasons. When receiving a recommendation for emergency action, counsel should ensure that there is **sufficient evidence of an emergency** requiring immediate effectiveness of an order of suspension or revocation.[32]

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[32] 1980 Handbook, ¶ 1203.g.(1)(a)(b) at page 173 [emphasis added].

Also: Emergency action "**must be taken immediately when the need for such action is recognized.**"[33] FAA's first enforcement manual warned: "**Caution shall be exercized** by the inspector to insure that the facts and circumstances which appear to warrant the suspension do, in fact constitute an emergency."[34]

Recall that on May 2, 1985, Go Leasing was the only carrier operation ongoing; Royal American had been temporarily shut down three weeks earlier. "The most serious charges against respondent [Go Leasing]," said NTSB, "is that it operated numerous commercial flights when it did not hold appropriate certificate authority."[35] The rest but two, the Board described as "technical infractions demonstrating, at best, insufficient attention to recordkeeping processes."[36] The two, determined from maintenance records, rather than any equipment failure, involved the alleged failure to test at the proper time the accuracy of an engine temperature gauge and inspect a mechanical part that actuated the flaps. Even were the charges true, both had in fact been accomplished close to the time claimed appropriate by FAA. That determination was based on complex Airworthiness Directives and hotly contested by management as erroneous. Declaring an emergency was an extraordinary abuse of power.

B. FAILURE TO ALLOW CORRECTION ACTION

Section 605 of the FA Act,[37] mandates that FAA inspectors "shall be charged with the duty . . . (2) of **advising and cooperating** with each air carrier in the inspection and maintenance thereof by the air carrier." And further, should he find that "any aircraft . . . **is not in condition for safe operation, he shall so notify the carrier** . . ." And may preemptorily ground the aircraft "for a period of five days."

This statutory mandate to "advise and cooperate" is reflected in Western Region policy:

> In the event that the required corrective action is of an emergency nature, appropriate elements of the report will be transferred to the action office [principal inspectors] as the situation may dictate.

Order WP 2150.1A, ¶ 6.d. (1984). And was expressed in the 2/15/85 Western Region directive which initiated the special inspection:

> In cases where immediate action is required, the team leader will report the alleged violation to the appropriate principal inspector as soon as possible to initiate corrective action.

And again in the 4/24/85 cover letter to the Arizona inspectors enclosing the team's report:

> In accordance with Order 2150.A, please reply, in writing, to the findings and recommendations within 30 days of receipt of the evaluation report. The report closeout shall describe corrective action taken on each specific item. If corrective action cannot be initiated or accomplished within 30 days, a supplemental report shall be provided on a 30-day follow-up until all items are resolved. Items not resolved within 60 days, will require justification in the follow-up report. [Emphasis added]

In spite of these ringing Congressional, agency and region statements about advise and cooperate, Western Region officials deliberately took steps to make sure Clark and management would have no opportunity to rebut, mitigate and, especially, take corrective action. Why? Because any valid charges that might have survived such a screening could not possibly have supported revocation, much less an emergency; and, for reasons that will shortly become apparent, they wanted to "get" Clark.

Absolute proof that this was deliberate came unexpectedly in the 4/15/85 "Smoking Gun" memo, EXH C, found in a stack of documents obtained by discovery in the district court action. Rhuno Nelson, same inspector who did most of the maintenance surveillance (and accepted the UAL tags for years, then testified they were no good), talked on the phone that date with team leader Rotelli about followup for the inspection, which ended March 27:

> Joe Rotelli reported that he would brief our management sometime next week but would not brief the operator (RAMA). This was not his decision, he said. . . . [Emphasis added].

Understandably, since it was such a clear violation of law and policy, Rotelli was chagrined about this.[38] Note the game being played by his superiors: the inspection ended March 27, on April 15 the principal inspectors were told there'd be no corrective action, yet little more than a week later, April 24, those superiors sent a cover letter saying they could do just that, then on May 2 issued the emergency order. Obviously, they never had the slightest intention of obeying the law.

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[33] Id. ¶ 205.d.(1)(a) at page 16 [emphasis added].

[34] FAA Manual of Procedures 22, ¶ .551 (1960) [emphasis added].

[35] NTSB Order EA-2190 at 10, Jul. 11, 1985, Docket SE-6766.

[36] Id. As stated earlier, virtually all of these so-called "bookkeeping" charges were minor and easily correctible.

[37] 49 U.S.C. § 1425(b) [emphasis added].

Months later, in his sworn U.S. District Court affidavit, William Withycombe, special team supervisor (from L.A.) said:

> [¶ 7] I believe that the extent and nature of the violations warranted an immediately effective revocation of the certificates which was essential and necessary in the public interest as to assure aviation safety.
>
> [¶ 4] In my capacity as Team Coordinator, I was informed that during the course of the special inspection, the investigating team reported to RAMA [Royal American] and GOA [Go Air] employees all the significant discrepancies which required corrective action, in accordance with my specific instructions. . . . [Emphasis added]

This latter statement was very clever: if one knows the real facts, taken in isolation it was true. The team did in fact report "all significant discrepancies." The Bahamas generator matter; the flight attendants emergency chute training. And they were immediately corrected. But that's all there ever were. Taken in context of the entire affidavit, the implications of this statement were utterly false: "There were many other significant discrepancies, we told management about them, but they didn't do anything, so we had to take emergency action." If that was true, then why didn't the emergency order say so and specify what they were? Why did these men do something so palpably false? Answer, next section.

C. REVOCATION vs. CIVIL PENALTIES

FAA's enforcement manual provides: "In cases involving organizations, revocation should be sought where their conduct demonstrates a lack of qualification; i.e., **deliberate and flagrant violations; falsification of records.**"[39] Further:

> Civil penalty may also be used in lieu of certificate action where a suspension is **not necessary to obtain immediate corrective action.** For example, where a major air carrier is involved in a maintenance violation **and has taken satisfactory corrective action**, a substantial civil penalty will serve as an appropriate deterrent without disrupting essential air service to the public. Civil penalties also may be initiated in any case where normally a suspension would be **manifestly unfair or create an undue hardship and is not required for aviation safety.** However, when there is a **serious ongoing safety violation** involved, **and immediate corrective action cannot be obtained**, certificaze action should be considered notwithstanding hardship to the certificate holder or disruption of public service.[40]

None of the charges involved "deliberate and flagrant violations; [or] falsification of records." All were at the other end of the spectrum. Certificate action was "not necessary to obtain immediate corrective action." Had it been, the order would have stated the action was being taken because the operator refused to do so. This is meaningless, anyway: how could management have "taken satisfactory corrective action" when region officials deliberately kept them in the dark as to what the vast majority of claimed discrepancies were? In the two instances where the on-site team informed them, "immediate" understates just how quickly management acted.

It is utter nonsense to suggest an emergency revocation was "required for aviation safety," or that it was not "manifestly unfair" or would not "create an undue hardship." Tell that to 143 employees, Club Med officials and three Rock Bands. None of the violations could be considered "serious," and if in one or two instances they could have been considered "ongoing," that was only because management hadn't been told what they were so they could correct them. "Immediate corrective action" could easily have been obtained. Note the term "major" carrier. Is Royal American Airways, tiny as compared to United Air Lines, subject to FAA officials' whim, with fewer rights, simply because so small?[41]

VIII. "I'VE GOT YOU THIS TIME"

Why would Western Region officials arbitrarily shut down an operation with a perfect 15-year safety and no-violation record, and put 143 persons out of work? When not suggested by principal inspectors or inspection team? In violation of FAA policy to allow the operator to rebut, mitigate or correct discrepancies? When management promptly corrected problems, took costly steps to add management, even shut down one company?

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[38] While on Go Group premises, at least twice during the five-week inspection, and specifically at the end, Rotelli promised Clark he would be informed of all discrepancies.

[39] 1980 Handbook, ¶ 205.c.(2) at page 16 [emphasis added].

[40] Id. ¶ 205.a.(1) [emphasis added].

[41] See "Double Standard" article, EXH D.

The answer requires some background. After airline deregulation (1978), FAA created the Part 125 certificate (1980), the kind held by Go Leasing. This allowed it to fully operate, that is, both lease (charter) and supply crews for large aircraft. Before, starting from the time economic regulation and subsidization of airlines began in 1938,[42] one could not operate for hire any aircraft weighing more than the arbitrary limit of 12,500 lbs., unless an airline, or with a CAB supplemental carrier certificate, which might cost a million dollars to obtain. The object was to limit competition with the subsidized airlines.

In some situations, there was a way to get around this. Entrepreneurs, at low prices, bought up WW-II surplus military transports, later, airliners replaced by jets, then leased them, say, to universities with active sports programs. The idea was that the lessee would then independently contract with someone else to provide the crew. If there was any connection between the person leasing the aircraft and those who crewed it, that person was held in effect to be acting as a supplemental carrier sans certificate and was subject to injunction and large fines. But as long as the two were kept separate, with no ownership connection, there was no violation of law. Being a free country, just as any person or group could lease (or buy) a bus if they wanted, they could also lease a large airplane, and legally they would become its operator and responsible for providing crew. The low initial cost of these used aircraft kept lease rates affordable; the other cost advantage was, as a private aircraft, they could operate it under FAR Part 91, same rules used for a Piper Cub -- much less stringent and therefore less expensive than those for carriers.

A number of accidents, especially the Wichita State football team crash in the mid-60s, put the heat on FAA to investigate these operations. FAA and CAB were virtually paranoid about them. No doubt there was subterfuge by some, with a hidden connection between lessor and flight crew. But Clark was scrupulous in keeping the separation. In 1977, Western Region conducted, evidently as part of a nationwide look at such operations, a three-month investigation into Clark's, by far the largest in the country. A kind of in-house one-man grand jury investigation with five days of formal hearings was held at the end with an FAA lawyer as hearing officer. FAA claimed violations which, at $1,000 each, mounted into the hundreds of thousands of dollars. These involved subterfuge, and the maintenance and operation of Viscounts being leased to entertainment groups. During those three months region officials engaged in harassment: they interrogated customers in a manner that indicated Go operations were illegal and unsafe; Burbank tower controllers were instructed to inform the region duty officer of its flight plan every time a Viscount took off. FAA inspectors would show up at its destination and demand to see all required paperwork. This was not a spot check, but all flights. The company finally had pilots file for, say, Reno, then in mid-flight refile to Las Vegas.

FAA lawyers were candid about what they were trying to do: force Clark out of the leasing business. They offered to drop all civil penalties if he'd stop. They also said they were going after him so hard because, as biggest and best in that business, if successful, they could then go after smaller operators. His response, of course, was to fight.

The investigation and hearings produced absolutely nothing! In charge of the affair was regional counsel DeWitte T. Lawson, Jr. No charges were ever brought, that is, turned over to a U.S. Attorney for prosecution. Clark's legal fees: $85,000! Two months later, Lawson asked Clark's lawyers if he would pay a $2,000 compromise civil penalty. The answer? Negative. In hindsight, it might have been the cheapest two thousand ever spent![43]

On Friday, May 3, 1985, day the emergency order was served, that evening, through an FAA facility, Clark was able to get patched through to Lawson at his home. During the conversation Lawson remarked to this effect: "I'm ready for you, and you're not going to win. You're going to be surprised. I've got you this time." The failure in 1978 no doubt severely embarrassed Lawson and these same officials who now determined to shut the company down through certificate action. The real motivation for this unwarranted use of emergency revocation may now be understood: to finish the job they'd started in 1977 -- pure and simple, retribution.[44]

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[42] With the Civil Aeronautics Act of 1938.

[43] This affair involved the same officials as 1985. And the technique was similar: drum up hundreds of maintenance and operations violations. But the key difference is that in 1977 Clark didn't have any certificates Lawson could go after. Instead of being able to just dictate an order to his secretary, this meant that to really go after Clark, he'd have to turn the claimed violations over to the local U.S. Attorney for prosecution. Rather than do this, he suggested to Clark's lawyers that they have the in-house hearing, evidently thinking that would expose so much it would persuade Clark to pay substantial civil penalties, at least a partial victory if he couldn't be driven out of business.

IX. INTERFERENCE WITH LEASING AIRCRAFT

At time of shut down, ten Viscounts were operable (those that'd been used on the two operating certificates), with only a modest amount of work required to make several of the remaining ten flyable. All were owned or controlled by Clark's Go Group, not Go Leasing, Inc. or Royal American Airways, Inc. No enforcement action was directed against any of their airworthiness certificates.[45] Had there, remedying any problem complained of would've restored them. These aircraft represented valuable assets which could have been leased to other operators, who might have picked up the Club Med contract, the entertainment groups (Go Leasing had $3 million already booked and scheduled -- all of which was totally lost), Caribbean hotel and casino work, or fill-in routes for other carriers. Even two or three leased out would have provided considerable income.

Shortly after shutdown, a number of inquiries were made about the Viscounts' availability. But nothing developed -- with one exception: Walt Cole, an Air California captain, applied for a Part 125 certificate in the name of Viscount Air Services, Inc. (VASI). His intent was to pick up some of the entertainment business. His certificate should easily have been granted within 60 days -- the end of July. Cole was eminently qualified. In his off time he captained a Boeing 707 for an Atlanta travel club. He owned a Viscount he'd bought from a Seattle travel club, but it was in passenger configuration and not suitable for entertainment groups. However, even though the aircraft he was going to lease had been on Go Leasing's 125 certificate for years and had just come off active service, and the manuals he submitted were patterned directly from that company's, accepted by FAA for years, persistent objections were raised, so the application still hadn't been issued by the end of September. Van Nuys Flight Standards District Office inspectors assigned to the application stated openly that the interference was coming from region headquarters.

About that time, separate anonymous sources told this story to Clark and Cole: that high Western Region officials had met and discussed the fact they thought they would lose their legal battle with Clark and they determined to do whatever they could to prevent him from leasing the Viscounts to others so he wouldn't have a cash flow and be able to afford the legal costs necessary to defend himself.

Upon learning this, Mr. Smith immediately began interviewing people who had contacted Clark back in May and June. The experience of one is illuminating: discouraged by Florida inspectors about putting a Viscount on an existing Part 121 air carrier certificate, with the idea of picking up the Club Med business, he was told to check with Western Region. He did, and was told by a Los Angeles inspector that any such effort would be a waste of time until Go Group legal matters were settled -- which meant, of course, into the indefinite future.

Another Part 125 operator who inquired, when he checked with his local FSDO learned that Western Region had sent a Telex to all FAA FSDOs instructing them, whenever an operator applied to put any Viscount on his certificate, or someone applied for a certificate with a Viscount designated as the operating aircraft, to send the application to Los Angeles for screening.

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[44] To further confirm that this was funny business, one need only review FAA treatment of Continental, Galaxy and American Airlines in similar circumstances and as reported in newspaper articles. EXHs I, J and K, respectively. Western Region officials said they only found 20 violations in a searching investigation of Continental which, remarkably, "were in addition to nearly 100 'discrepancies' in which inspectors found fault but no violation of regulations." This was doubletalk. How could there be fault if the airline wasn't violating something? Note, the inspectors findings were quite similar to the Go Group. The differences are: only a very few in the Go Group were valid; and Continental was not shut down, but allowed to pay civil penalties.

Another key difference: the Continental investigation was fomented by pressure from the Air Line Pilots Association, still smarting from their treatment by Continental's new management. Since it wasn't their own idea, had they conceded the situation was even mildly serious, Western Region officials would've shot themselves in the foot.

The most invidious comparison is with Galaxy Airlines. It's the outfit whose Lockheed Electra crashed shortly after takeoff at Reno killing 70 people. An FAA inspector called the company's maintenance logs for "the same plane . . . 'nothing more than a joke' and and questioned the 'integrity and intentions' of Sheriden [company owner] . . ." A week or two later another of Galaxy's Electra's crashed on takeoff carrying freight. Its operating certificate was not suspended or revoked.

Why was American Airlines allowed to pay a civil penalty, but not the Go Group?

[45] The only lawful way to declare an aircraft unairworthy is for FAA to bring an action against its airworthiness certificate. 49 U.S.C. § 1429(a).

This was out and out interference with Clark's right to do business. Whether criminal or not we do not know, but it certainly violated his constitutional rights. There was no lawful basis whatsoever for the Telex, or claim that any of the Viscounts were not airworthy. Clark, back in May, had heard rumors from his insurance agent that this was the story FAA was spreading. He wrote a letter to Lawson demanding to be told just what was wrong with the Viscounts. Lawson never replied.

Captain Cole continued to press his application. Region headquarters insisted that it be sent to them for screening. When Cole called and demanded to know for what purpose Region was reviewing the matter, the inspector refused to tell him. By December regional counsel's office had the file. When Cole finally hired an attorney, they responded that it would soon be sent back to Van Nuys. After requesting one or two minor and innocuous changes, Lawson's office finally returned the file to Van Nuys. Cole initiated his application in late May. It was finalized in January. He should have had it by the end of July. The Van Nuys inspectors said they'd never heard of Region reviewing a 125 or 121 application, it was always handled on the local level.

The charter operator who found out about the Telex, never did get approval. Every time he'd talk to his local inspectors they'd call Los Angeles and come back with some requirement -- never put in writing -- that was extremely difficult to fulfill. Once he was even told he couldn't lease the aircraft, but would have to own it. It was made clear to him that his application would receive very close scrutiny. So he dropped out. Cole immediately put his leased Viscount to work, and it has worked steadily ever since. He now has two.

There isn't the slightest doubt but high Western Region officials engaged in the very campaign the anonymous sources revealed they'd planned. We complained vigorously to the Administrator, but to no avail. We do know that an FAA-Washington lawyer was assigned to investigate, so somewhere in FAA files is a report that would be most enlightening.[46]

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[46] We have documentary evidence (same source as the "Smoking Gun" memo) that back in May, a week or two after the order was served, Los Angeles instructed Phoenix they could entertain an application for a Part 125 certificate on behalf of a new company (Go Leasing II). Evidently when region officials learned Clark was going to vigorously oppose their charges, they withdrew that permission, which killed any chance of having any early certificate with which to pick up contracts already in-house and keep a cash flow. So it was probably about this time that these officials decided to prevent Clark from leasing his aircraft.

X. PUNITIVE CERTIFICATE ACTIONS, NO LAWFUL BASIS

Since the time federal regulation of aviation began in 1926, FAA and predecessor agencies have initiated 70,000 certificate safety-violation cases.[47] There is not now nor has there ever been any lawful basis for them. Starting day one, government aviation officials have engaged in a six-decades long coverup of this fact -- a coverup that continues. Startling? Of course! But the history and facts supporting this charge are detailed in Emperor, EXH G, and No Basis in Law, EXH F.

Since these articles thoroughly cover the matter, we will set forth here only a few salient facts. **There is not now nor has there ever been any statute which so much as hints that the government may impose the sanction of suspension or revocation for the violation of a safety rule. Or cause violation charges to be tried before the NTSB rather than in district court with right to jury.** In 1926 Congress considered a criminal enforcement system, $500 and/or 90 days, and a civil money penalty system with right to jury trial. It chose the latter. At no time then, or since, has it ever considered license suspensions as a penalty for safety violations. No such bill has ever been introduced, or hearings held. **The system was solely the creation of executive branch officials unwilling to work with the civil penalty system Congress had just enacted.**

The touchstone case, Wilson v. CAB, which upheld the punitive certificate sanction system in 1957, first time it was ever challenged, is based on fundamental error: belief by that court that it began in 1938 -- when in fact it began in 1926.[48] Thus Wilson is worthless as precedent; any argument on what Congress intended must be conducted in the time-frame of 1926. The legislative history there is crystal clear: civil money penalties with right to jury -- nothing else. FAA lawyers are well aware of this mistake, yet continue to cite *Wilson* as authority for their actions which, on its face, in our view, is a fraud on the courts.

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[47] FAA use of section 609, 49 U.S.C. § 1429-(a), involves a dichotomy: cases where suspension or revocation is sought as a sanction or punishment for violations; cases where the certificate holder's qualifications become suspect. The former constitute 95% of all certificate actions.

[48] The court could cite only vague language about "public interest" from the Civil Aeronautics Act of 1938 to support its holding. As Emperor points out, it was reaching for any peg on which it could hang a decision upholding the system.

XI. VIOLATIONS OF ADMIN. PROC. ACT

In addition to lack of a statute, **there is not now, nor has there been since 1940, any regulation which tells pilots, mechanics or operators that their certificates are subject to suspension or revocation as a sanction (penalty) for the violation of safety rules.** Or that the choice of penalty and forum is in the absolute discretion of the very official in the executive branch who initiates the case. Although it had no lawful basis, a rule did exist from 1926 to 1940. Its disappearance in 1940 is part of the coverup detailed in *Emperor*.

To put the matter another way, at no time in the six-decade history of federal regulation of aviation, either through congressional hearings, or APA notice and comment procedures, has the public ever had a say in the making of this policy. It is strictly the creature of bureaucracy.

The single rule FAA has on certificate action, FAR § 13.19, mentions only *reinspection* of aircraft and *reexamination* of airmen, that is, it is solely directed to qualification matters. It says absolutely nothing about rules, violations, offenses, penalties or sanctions. But even it has never been adopted through APA notice and comment procedures. This is also true of its companion rule on civil penalties, FAR § 13.15. This latter deliberately misstates the statute on which it is based, section 901 of the FA Act, 49 U.S.C. 1471. The rule says "if a civil penalty is contemplated"; section 901 says that "any" person who violates "any" rule "shall be" subject to a civil penalty.

By not promulgating its certificate penalty policy through notice and comment procedures, FAA is in violation of the APA, 5 U.S.C. § 553. At the very least it is a general statement of policy and should be published in the *Federal Register*. That failure is also a violation. 5 U.S.C. § 522(a)(1). FAA has never promulgated a rule incorporating its emergency power. Ditto. Such a rule did in fact exist under the Civil Aeronautics Administration (CAA), but CAA lawyers, when they became FAA lawyers, dropped it. The list goes on and on.

Put another way, there is nothing in the *United States Code* or the *Code of Federal Regulations* that either layman or lawyer could read that so much as hints that pilot, mechanic or operator can lose his license as punishment for the violation of a safety rule. FAA officials violate the APA and fundamental concepts of due process for a very cogent reason: were they to promulgate these policies through public notice and comment procedures they would have to state clearly what their legal basis is -- and they can't, because none exists.

The Go Group case provides another example of how such a loose, unformalized enforcement program allows citizen rights to be abused. The emergency order required the companies to turn in their certificates. Because of oversight, this was not done: management was preoccupied with a myriad of business decisions, laying off almost all of its 143 employees, etc.; and counsel had to focus on and prepare for the Go Leasing hearing, the only real chance of getting back into business. So for four months the three certificates simply hung in their frames on the wall in the reception area with everyone walking by them daily. Lawson then sent a letter calling attention to the fact these certificates had not been turned in. Recall that Go Leasing had defeated revocation in the ALJ hearing but been given a 10-month suspension.

Mr. Smith immediately went to the facility, collected and took custody of the certificates. Suspecting that Lawson had something up his sleeve, he then wrote to him asking him to clarify what date the suspension would start from. Lawson replied that it wouldn't start until the certificate had been turned over. (He didn't bother to ask for Royal American's and Go Air's, which suggests an obvious lack of good faith in the matter; he well knew Go Leasing was the cash-flow entity.) Although there is a rule that requires a certificate to be turned over when suspended or revoked, there is no rule which states a suspension does not start until it is, nor what happens when an emergency revocation is later changed to a fixed suspension. In non-emergency cases, where an accused pilot has an automatic stay and can keep his license until end of trial or appeal, as a practical matter, if he loses, the suspension isn't going to start until he turns over his ticket. But pilot cases, where the man could use his license to obtain a job, or rent an airplane, have no relationship to a substantial operating company which immediately shuts down in response to an emergency order and couldn't possibly operate without FAA knowing it. Having honored the emergency order immediately, it is absurd to suggest that simple oversight concerning a piece of paper no one ever looks at anyway deserved an additional four months of penalty.

Mr. Clark took the issue to district court, where the judge, without even a motion from the government (because of his prior association with the Royal American and Go Air case), dismissed it for lack of subject matter jurisdiction. On appeal the circuit court said the case belonged at NTSB. This was totally in error, and illustrates how difficult it is to challenge FAA, when no court will accept jurisdiction. NTSB had neither jurisdiction of the issue, nor holds the type of injunctive and declaratory judgment powers required for its resolution.

Lawson thereafter issued an order of revocation for Go Leasing as punishment for its failure to turn over its certificate, the ALJ (the same as in the original case) rubberstamped the FAA order, the Board affirmed, and the matter is now on appeal. Revocation was anomalous. The matter was inadvertent, and had nothing to do with airsafety. What the matter tells us is that FAA-NTSB officials can do anything they want to: "How dare you challenge us, you'd better understand we don't need rules, and the law is what we say it is." And in any case, civil penalty action should have been used, which would have guaranteed Go Leasing's right to jury, with any fine set by an impartial district judge.

It should be noted that there was no point in turning over the certificate after Lawson injected a condition that had no basis in law. One way or the other Go Leasing would have had to go to federal court for a decision. Had there been a plain-spoken rule warning that this could happen, it would likely have caught the attention of management and counsel. Mr. Lawson personally tried the original case just one month after service of the emergency order, yet not once during the five-day hearing did he mention the certificates. Nor did the two inspectors when they served the emergency order.

XII. ADMINISTRATIVE JUSTICE

A few comments about administrative justice. If a Washington, D.C., city councilman were to propose that the accident investigation division of its police department be placed in charge of trials of traffic violations and that the only form of punishment be suspension or revocation of drivers' licenses, he would be hustled out of the room and taken to St. Elizabeth's. Yet this is precisely what pilot or operator faces if FAA regional counsel, in his sole discretion, decides to use certificate action rather than civil penalty. He receives a one-man NTSB[49] hearing with loose rules of evidence and procedure -- always looser for FAA than the accused, and the only way he can be punished is a certificate sanction. The so-called law judge is not truly independent. If the accused should by some chance win his case, the government (FAA) can appeal. If a pilot is defending himself, which as many as 45% do, and wins, but FAA appeals, he is now faced with a situation he can hardly handle, so if much is at stake, he now has to hire a lawyer. In any other system of justice, if the accused wins at the trial level, that ends it.[50]

The harshest situation comes when FAA uses its emergency power. Although the courts have upheld it, this power is clearly unconstitutional: it is an executive temporary restraining order (TRO), but with no requirement FAA officials provide an affidavit spelling out why it is needed nor is any provision made for a prompt and independent hearing to see if it is really necessary. NTSB claims it doesn't have authority to consider this issue -- balancing irreparable harm to the certificate holder against any threat to public safety. For all practical purposes this means there is no restraint on its use; it is easily abused, as here, and there

For example, shortly after the emergency order was served, attorneys Coleman and Smith went to see Lawson and asked him if Clark could pay a substantial civil penalty so that he could get back into business. Lawson stated that his "clients," Western Region Flight Standards officials, were too upset about the Club Med flights and wouldn't approve it. (Had they, and a civil penalty been paid, how can one explain what happened to the accused's right to jury trial? Emperor explains all.)

It is anomalous that FAA officials have such a choice. But look at what happens: even in a fairly benign case, if regional counsel has to choose between dictating the order to his secretary, signing it, then popping it in the mail, and putting together a file for the U.S. Attorney, trudging over to the courthouse and selling him on the case, then having to sit back and hope he'll press it, it's easy to see what choice most bureaucrats will make.

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[49] A major NTSB duty, also inherited in 1966 from CAB, is aircraft accident investigation. This now includes railroads, buses and gas lines. All that was ever intended for its quasi-judicial duties was the Board would hold hearings and decide certificate qualification issues.

[50] Congress, in 1926, 1938 and 1958, has consistently provided that trial of "offenses," statutory definition of which specifically includes rules violations, will be in U.S. District Court with right to "demand" jury trial. 49 U.S.C. §§ 1471 & 1473. Any claim that it would also authorize a one-man administrative trial for the same offense before a non-judicial body, with the executive branch official who initiates the case having absolute discretion to choose which forum, and thereby determine one's right to jury trial and fix in concrete right at the start the kind of penalty one will suffer, is so far removed from basic concepts of justice as to be irrational. **Yet this is precisely FAA's position.** (The few courts which have upheld certificate sanctions have demonstrably not understood how the enforcement program works -- or prefer to put their heads in the sand.)

is no recourse. FAA officials know full well, when they use it against an operating company, that it will destroy it outright or, at the least, force it into Chapter 11 bankruptcy.

Management chose to take only Go Leasing to the accelerated hearing provided in emergency cases. It was earning all the money, it had fewer charges. It would have been almost impossible to prepare in that short time for the long list of alleged violations FAA presented in the emergency order for the other two companies. Royal American was shut down anyway, and Go Air mechanics could work just as well independently. Go Leasing defeated revocation. The ALJ held the evidence showed that management had always cooperated fully with FAA inspectors. This was a signal victory, but Pyrrhic because the law judge imposed a ten-month punitive suspension of its certificate, basically for the Club Med flights. What aviation business could survive that?

Royal American and Go Air were called for trial six months later in Los Angeles. With no warning that he would cut their trials short unless completed within a certain time, when the law judge learned Royal American's trial would last at least two weeks, he stopped it at the end of the first, then reset it for two months later. In Denver, Colorado, where he lived! (900 miles from Tucson.) This was incredible. Management had been prepared to finish both trials in Los Angeles at one shot. Mr. Clark had a home there in which to put up witnesses, and several had moved to L.A. But Denver? Why not Minot? He couldn't possibly afford the cost that transportation, food and lodging entailed for management, lawyers and witnesses. There simply wasn't money to do it.[51] As a consequence, in practical effect the case was defaulted, a $500,000 certificate lost. The law judge then reset Go Air for May of '86 in Phoenix. Same problem. Also in effect defaulted.[52] A large and suitable conference room often used for hearings by other agencies was available in the federal office building in Tucson. But the ALJ insisted he had to have a courtroom, which wasn't as readily available in Tucson. This was nonsense, the hearing in L.A. was held in a small NTSB room, not a courtroom.[53]

XIII. DAMAGE DONE

How describe the turmoil suffered by 143 persons who lost their jobs? Mortgages, car payments, kids to clothe, medical plans? Mr. Clark had to immediately lay off all but twenty, those key people kept to support the aircraft he thought he'd be able to lease. Within four months, they were gone too.

It is true Clark was already in Chapter 11, as was Go Air, which had been the corporate vehicle for running the short-lived L.A.-Las Vegas airline. But neither the carriers Go Leasing or Royal American Airways were. Income from operations was running in excess of $750,000 per month and growing. Based on this, he was preparing a reorganization plan for the bankruptcy court. It put all of these activities into one pot, so to speak, and creditors would have become stockholders. The emergency revocation destroyed any possibility of this working.

His operations sat on ten-acres of prime real estate adjacent and with access to Tucson International Airport. It had been appraised as high as $4 millions and included two large hangars, administration building, plus other substantial out-buildings. He, of course, has now lost everything, including two homes with large equities. It is not possible at this time to exactly evaluate that loss, but it certainly exceeds $10 millions, and could be much, much higher. The reason this is difficult to assess is this: he basically cornered the market in the Western Hemisphere for Viscounts, spare parts and tooling. Sold under distress, these would be lucky to bring ten cents on the dollar of their value as part of a going organization. The Viscount is enormously useful and productive, but unless one has these spares and tooling, maintenance costs rise greatly.

That this is true is attested by the fact a British company, Jadepoint USA, an affiliate of which, British Air Ferries, operates 25 Viscounts, bought the bankruptcy estate, not only for its money-making potential in leasing the aircraft, but for the large stock of spares. Mr. Clark serves as consultant.

XIV. CONGRESSIONAL ACTION

Long range Compensation for Mr. Clark through a private bill is the ultimate goal. But such a proposal without laying a great deal of groundwork would draw tremendous resistance: FAA will never admit wrongdoing; some will see it as opening a Pandora's box because many others similarly situated should also be compensated. But it must be accepted as a given that sooner or later the illegality of FAA punitive certificate actions and the agency's flagrant violations of the APA will become known--which will create a firestorm within the aviation community, and hopefully the public at large. It is our considered view that FAA's illegal actions, and coverup, represent one of the great abuses of power -- if not *the* greatest -- in the history of the federal *bureaucracy*. Its human impact is on a scale equal to the internment of Japanese Americans in World War II, the only difference, that happened in one fell swoop, this over a period of decades.

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[51] Remember that Western Region had done everything possible to keep Clark from leasing his planes, and it was several months after this before the first one started to produce revenues.

[52] An appeal is pending, but restoring the certificate will provide no real direct benefit since other arrangements for a repair station have already been made. But a victory will assure that it is unlikely the same thing will ever happen again.

[53] This was clearly the result of what we call the "black robe" syndrome, a desire to be thought of as equivalent to a United States District Judge. The syndrome is a result of when Congress decided to upgrade hearing examiners, let them wear robes, and call them administrative law judges. To our knowledge, no oversight's ever been had of NTSB administrative justice.

Short range As a foundation for the above, and also to stop these abuses from happening at all, it is imperative to establish beyond peradventure the truth about FAA enforcement. This must and should be done through Congressional hearings. The aviation subcommittees are *not* the proper vehicle. To a great extent they are on the spot. The proper vehicles are the Senate and House Judiciary subcommittees responsible for constitutional and administrative law. (It is our view that the root of these problems is that the FA Act in 1958 was reviewed by neither Judiciary committee.) If one reads *Emperor* and the *Aviation Digest* articles, he will see that the principle reason FAA has been able to get away with what it has is because it totally ignores the APA in its enforcement program. Were it to propose rulemaking for its present certificate program through public notice and comment procedures it would have to explain what its legal authority is. The claim that its officials can do whatever they want to, so long as they say it is in the "public interest," simply cannot stand scrutiny. And even if that were true, why have they not invited the public to help in making such rules?

A foundation can be laid to demonstrate the need for these hearings in this fashion: the chairmen of these committees should request the Administrative Conference of the United States to review Mr. Smith's articles and issue a report as to the validity of his charges. The Conference is a tiny and little-known independent agency within the executive branch. Its charter is to monitor federal administrative law and to execute special assignments at the direction of Congress. From time to time these include informal tasks such as we suggest, and would not require special legislation or appropriations. We know this, because we have already checked. Armed with that report (the conclusion of which is a certainty), the subcommittee and Judiciary committee chairmen will come to understand and then be able to show the imperative public need for such hearings.

XV. CONCLUSION

The evidence is overwhelming that Western Region officials deliberately set out to destroy the Go Group -- and, of course, succeeded. They charged inadequate management when their own inspectors had requested and approved consolidation of key jobs for all three companies. They charged failure to overhaul components when their own inspectors had for years been accepting documentation that they had been, tags even today accepted by FAA from UAL.

They charged that certain foreign components lacked proper documentation even though FAA-Washington lawyers had approved as sufficient that which was supplied by the British stockist and their own inspectors had been accepting it all along.

They deliberately violated their own procedures by not allowing management to see the special team's list of discrepancies so they could rebut or mitigate any charges and, most importantly, take corrective action, which would have left these officials without any justification for revocation, much less an emergency.

In a nutshell, what we have here is the anomalous situation of the agency's right hand charging as violations serious enough to require emergency revocation matters which other agency officials had approved -- and the right hand was well aware of it.

Leaving aside the fact Mr. Clark shut down Royal American's Part 121 air carrier operation so as to concentrate management on Go Leasing, and he had already beefed up Go Air's, the only fair way to solve that problem was to give specific notice of what these officials claimed was needed, along with reasonable time to accomplish it, and if not so done, suspend the certificates only until it was.

Even were the overhaul charges legitimate, they could have been quickly cured by installing recently overhauled parts *with* additional documentation. And it should be remembered that on May 2, 1985, of the three airplanes involved, one wasn't flying, the other two had been transferred to Go Leasing where the charge had no basis anyway since the parts were not on hard-time but on condition.

The foreign parts problem could have been solved by giving management time to send for the additional documentation -- in fact, this was later done.

The facts strongly suggest improper motives in this matter, made the worse because the officials involved did these things under color of authority. Justice for Mr. Clark, one million FAA certificate holders, and thousands of employees, demands that it not be allowed to happen again.

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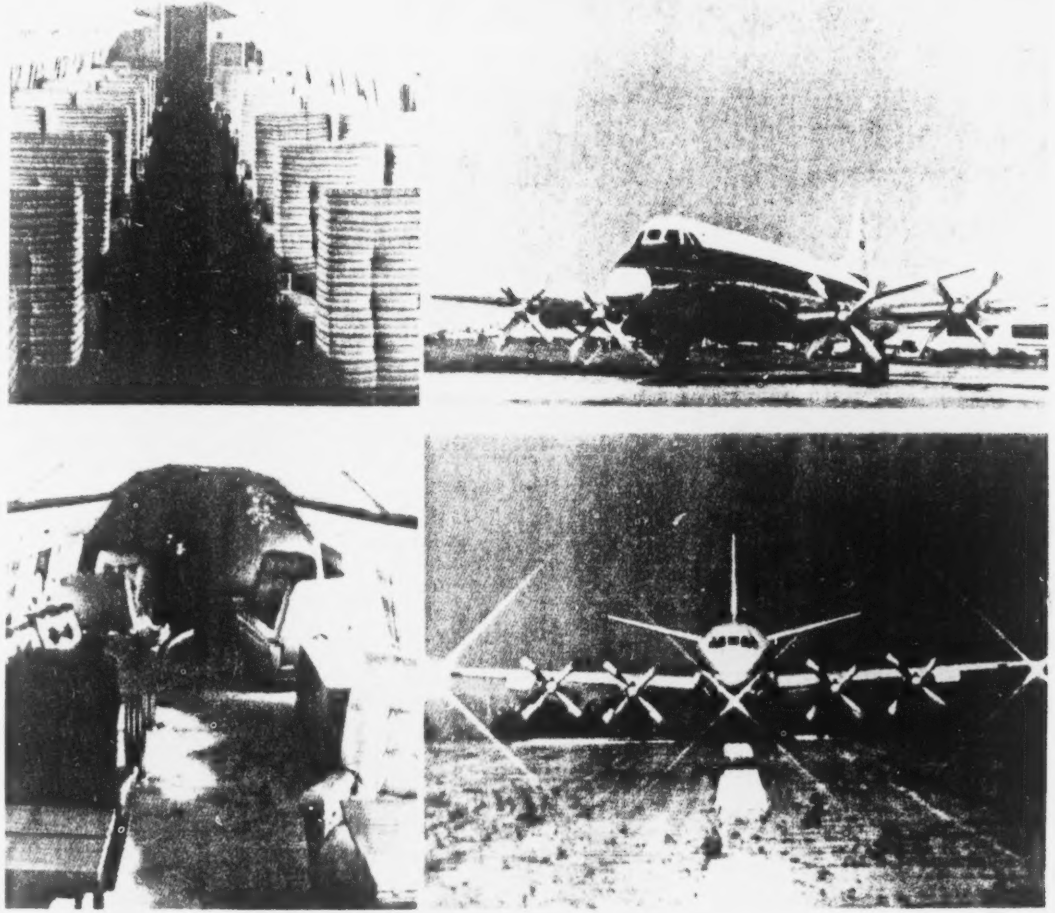
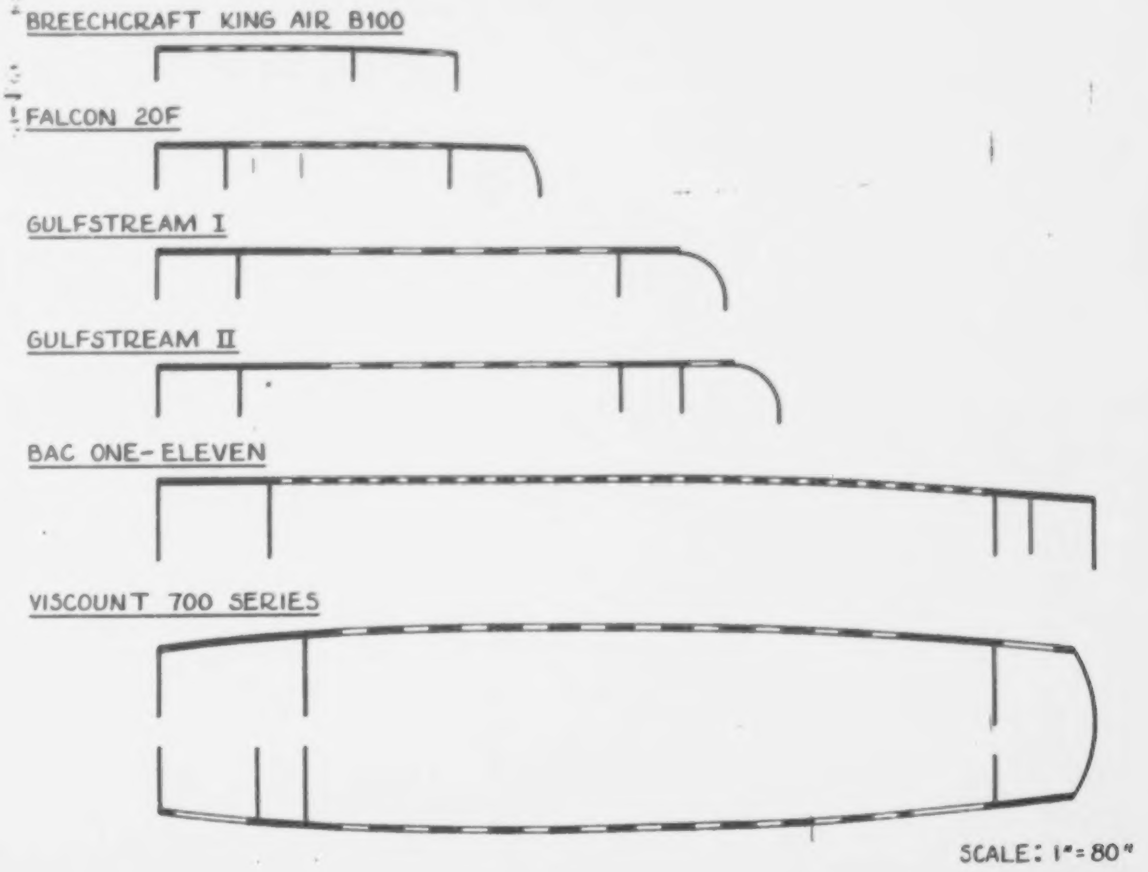


EXHIBIT A

CABIN COMPARISON CHART


BREECHCRAFT KING AIR B100
FALCON 20F
GULFSTREAM I
GULFSTREAM II
BAC ONE-ELEVEN
VISCOUNT 700 SERIES
SCALE: 1" = 80"

GO

GO
LEASING, INC.

NONE OF THESE ARTISTS HAVE EVER MISSED A GIG
OR BEEN LATE FOR A SHOW BECAUSE OF A MECHANICAL PROBLEMS WHILE
TOURING ON A "GO LEASING" VISCOUNT!

AEROSMITH
HERB ALPERT
AMERICA
BAD COMPANY
BEACH BOYS
BOSTON
BROTHERS JOHNSON
BOZ SCAGGS
GOVERNOR BROWN
CAPTAIN & TENNILLE
CARPENTERS
CHICAGO
ERIC CLAPTON
COMMODORES
ALICE COOPER
CROSBY, STILLS, NASH
DEEP PURPLE
JOHN DENVER
DURAN DURAN
ELECTRIC LIGHT ORCHESTRA
EARTH, WIND, FIRE
EAGLES
EMERSON, LAKE, PALMER
EMOTIONS
FLEETWOOD MAC
FOREIGNER
DAN FOGLEBERG
PETER FRAMPTON
ANDY GIBB
GENESIS
ENGLEBERT HUMPERDINK
BILLY IDOL
JEFFERSON STARSHIP
JOURNEY
BILLY JOEL
ELTON JOHN
TOM JONES
BARRY MANILOW
DEAN MARTIN
MEN AT WORK
WAYNE NEWTON
RICK NELSON
STEVIE NICKS
THE OSMONDS
JIMMY PAGE & THE FIRM
ROBERT PLANT
PINK FLOYD
POLICE
ELVIS PRESLEY
PRINCE
QUEEN
LOU RAWLS
LIONEL RICHIE
LEON RUSSELL
SUZANNE SOMERS
RICK SPRINGFIELD
ROD STEWART
STYX
TANYA TUCKER
THREE DOG NIGHT
U 2
FRANKIE VALLE
THE WHO
EDGAR WINTER
YES
FRANK ZAPPA

GO

GO VISCOUNT

- FOUR ENGINE SAFETY AND PERFORMANCE -

Smooth, dependable Rolls Royce Dart turbine engines.

Certified for flight into known icing conditions, heated wings, tail, props, cowls and windshields.

300 MPH+ cruise.

Long range fuel tanks.

Cruise above weather, up to 25,000 feet.

Short field performance excellent.

Take-off certified at high altitude airports.

Engines out performance phenomenal, aircraft will fly with just one engine operative.

Safer and more comfortable storm penetration with dual WX radar.

Collins airline avionics including dual Collins flight directors with auto-pilot and couplers.

Electrical system superior, with 4 DC generators, 3 main system inverters (2500VA), 1 standby inverter (250VA), 2-engine driven alternators, 4 Nicad batteries and 110 VAC cabin electrical system.

- RELIABILITY -

The Viscount is designed for ease of maintenance and exceptional reliability.

This airplane is currently maintained on the BAC Factory Inspection Schedule, and has always had excellent maintenance.

All aircraft directives current.

Critical spare parts bin onboard aircraft.

The aircraft are currently being maintained at the GO AIR, INC. Viscount overhaul facility in Tucson, Arizona, an FAA Certificated Repair Station #434-1; and, an affiliate company of GO LEASING, INC., an FAA Certificated FAR 125 Operator # WE-34-1.

GO Newsletter

GENERAL NEWS

APRIL 1, 1985

Dear friends,

Lately The Go Group has been doing business all over the world, with employees and crew members spread from Israel to Punta Cana! From where I sit, which is right across from the President of the company, it is nearly impossible to keep up with all the activity! In an effort to help unify and keep our team of almost 150 terrific employees & independent contractors on the same wave-length, I thought I'd revive our company newsletter. I will try to put a newsletter out atleast once a month. If you have any news or suggestions, please get in touch!

With warmest regards,
Kathi Stebila
Sec. to Ronald J. Clark

Florida
Turks & Caicos Islands
Cuba
Santo Domingo
Haiti

TURKS & CAICOS ISLANDS HERE WE GO

The Go Group has been chosen by Caicos International Airways to provide Viscount aircraft, technical services and maintenance for their new operation in the Carribbean. Funds have already been transferred to The Go Group for its potential participation. We have two 83 passenger stretch Viscounts in Israel which we are now arranging to bring to the Tucson Go Air Repair Station for conformity to U.S. airline specifications. (The Turks & Caicos Islands are a British Crown Colony)

Upon completion of the conformity the planes will be located on the island of Grand Turk and daily airline operations will begin. With this project literally in its infancy, it is hard to give any more details. Ron and I have already visited the islands, met with the CAA and the Prime Minister and received a warm welcome. It is a beautiful place and we hope we can all enjoy a tropical vacation next year!

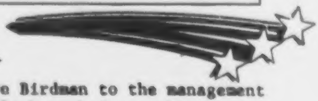
NIGEL GOES TO ISRAEL !!!

Nigel White recently spent 3 weeks in Israel working on the transfer of the Viscounts for the Caicos Int. project. Nigel is an old friend of The Go Group, having been a British Viscount engineer, Chief Inspector for GO Transportation (former repair station in Burbank) and later headed up sales for GO Leasing. Nigel presently runs Air Cruise, a company that works closely with GO Leasing, based in Southern California.

FUEL DEPARTMENT REORGANIZATION

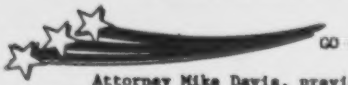
It is with sad regret that we announce the departure of Sheila Kregar and Jan Edwards from The GO Group Fuel Department. For personal reasons both gals have decided to leave our company. We will all miss these wonderful ladies and wish them all the luck in the world.

Former Flight Attendent Caroline Denman will now take over some of the duties of fuel purchasing and planning. The department will be expanding to cover the growing needs of GO Leasing and Royal American Airways. Lets all give Caroline the support and cooperation she needs to take on this formidable task! She can be found in the GO Leasing office working under the supervision of Michael Coward.



OLD FRIEND RETURNS

We are pleased to announce the return of Mr. Steve Birdman to the management ranks of The GO Group. For ten years Steve and Ron Clark worked together as founding partners of the GO Group predecessor companies. Steve will be working as a management consultant, filling the duties of General Manager of GO AIR Repair Station in Tucson and heading up several new projects. Steve can be found in the executive office in Tucson. Welcome Back, Steve!!



GO GROUP WELCOMES MIKE DAVIS

Attorney Mike Davis, previously VP and Legal Counsel for Atlantic Gulf Airlines, has been retained by The GO Group. One of his projects is to assist Caicos Int. Airlines in getting U.S. Foreign Air Carrier Operations. Mike can be found at the Tampa office.

GO GROUP OFFICES

For your info, we now have an office in Tampa, plus a crew house and car! These condos are luxurious, close to the airport and are there for your use. Please help stop the hotel bills! As you should know we also have a crew house in Ft. Lauderdale.

TOM JOLITZ - Special Projects & Collections Officer

(Please do not refer to Tom as the "Company Junk Yard Dog"...........
He prefers "INDUSTRIAL MORTICIAN")

GO AIR

BRAVO FOR THE GO AIR MECHANICS AND MAINTENANCE CREWS!!!! Working 24 hour shifts at break-neck speed they converted 460RC to an executive interior in two days..... the band U-2 loves it!! Special thanks to Sergio and his crew!

240RC came in for maintenace during the Jimmy Page/FIRM tour and was turned around in 48 hours with a cosmetic face-lift!

145RA was recently given a completely new interior and some major mechanical work.

140RA is now have landing gear overhauled, major electrical system rewiring, wing bolt change, heavy check and new paint job!

(these guys are the backbone of The GO Group, and we know it, guys!)

Royal American Airways

FLIGHT FOLLOWING GETS NEW START

Another area of operations that is receiving a major overhaul is DISPATCH/FLIGHT FOLLOWING. As you are all probably painfully aware, we have been experimenting with this department in an effort to set up the most effective operation possible for our widely diversified needs.

Don Higdon, Royal American Dispatcher, is now working to re-organize and build a strong flight following department. It is the intention of The GO Group to have 24 hour coverage, based in Tucson, doing the required dispatch for RAA and coordination of flights for GO Leasing. Don will be using qualified pilots and licensed dispatchers to cover your needs. Ron Clark is working closely with Don to implement new procedures in an effort to make Dispatch the COMMUNCIATIONS CENTER of The GO Group. Dispatch can be reached at 800-531-9399. If you get no answer, we now have a system of company officers on duty with Beepers - 602-291-0923 which is a voice system.

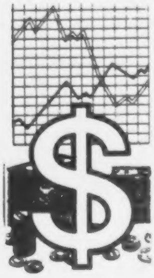
GO GROUP RE-GROUPS IN FLORIDA

As you know we have had to temporarily cut back operations in Florida. At this time we are giving 140RA and 145RA some mechanical attention in Tucson. The planes will soon be back in Florida and ready to GO with new crewmembers now being trained to properly handle the new contracts that Royal American has lined up!

We are still flying for CLUB MED with 24V at this time. CLUB MED is a very valuable customer and we sincerely appreciate your proffessional attitude and every effort to assist us in keeping our good standing with CLUB MED.

MISSION PAY --- where are you guys? Did you all receive a copy of the proposed new pay schedule? Lets hear your input!

THE BOTTOM LINE



One of my constant tasks is to assist in gathering info on the financial status of the companies for Ron. I am in a perfect situation to see all the $$$$ we make and all the $$$$$$$$$$ we spend! We should be making more right now, but the sad fact is that there is too much WASTE. Every day we all spend money to keep the companies going, thats what it takes - so it really comes down to each and every one of us spending that money as carefully as we can. This is money:

1. CASH (liable funds to you)
2. PHONE CALLS
3. COMPANY ASSETS
4. YOUR TIME

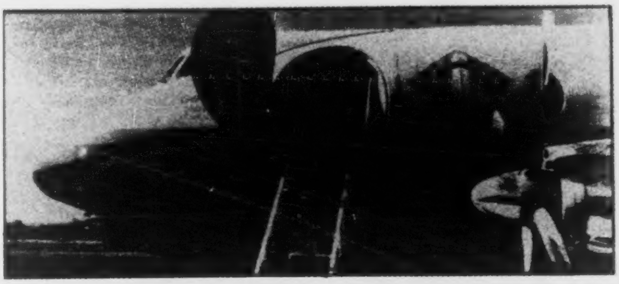
At this time the expansion of The Go Group of Companies needs to be as conservative in its spending as possible. On behalf or Ron Clark I ask you to take this very seriously and make your best effort to CONSERVE MONEY!! PROTECT THE ASSETS OF YOUR COMPANY!! THANK YOU!!

GO LEASING

GO LEASING IN THE MIDST OF FANTASTIC TOUR SEASON!!

For almost 15 years we have been proud of the continual growth of this consistently profitable member of The GO Group. Now under the direction of Michael Coward, GO Leasing has taken a giant step towards becoming a more powerful influence in the ROCK AND ROLL tour industry and a more professional, well-run company. So far in 1985 we have successfully toured:

- BARRY MANILOW
- U-2
- CHICAGO
- FOREIGNER
- THE FIRM



A warm welcome to accountant Paul Van Erven, a new member of the GO Leasing team. Paul has been making a major contribution to the efficiency and professionalism of the company. (Paul and Michael will both be major candidates for much needed vacations in the Turks and Caicos by the end of this year!)

"Hotshots"

*** MTV has been featuring a DURAN DURAN video with some great shots of 150RC!**

*** A JC Pennys commercial features 240RC!**

*** Cable TV is showing GOOD GUYS WEAR BLACK, staring 140RA! (co-starring Chuck Norris)**

(Let us know any time you see one of our Viscounts featured on TV or in print)

* U-2 now on tour is a religious/political band from Ireland, enjoying good reception, and in the good hands of Robin and Jeannie Pittock, along with First Officer Richard Fought

* We are proud to be touring FOREIGNER for NINE MONTHS this year! wow!

* CHICAGO is finished with leg one, now on leg two and planning leg three!! GO, GO!

* 1984 GO LEASING TOUR T-SHIRTS ARE HOT! We are down to less than 10, so if you are an employee and didn't get one, better call me! We are planning to print a new T-Shirt soon- - -

GO LEASING HAS A FULL TOUR SEASON BOOKED!! WE ARE PLANNING TO PUT MORE

VISCOUNTS INTO EXECUTIVE CONFORMITY TO MEET THE INFLUX OF BIZ WE ARE ENJOYING!!

KHIBIT

1. 83WP340001 Status Open $20,000
FAR 39.3

2. 80SW350035 Status Closed No Action
FAR 39.3

3. 84WP070156 Status Open $6,000
FAR 91.169

4 84WP070173 Status Open $1,000
FAR 91.213(c)

5 81 SW 33 0014 Status Closed No Action
FAR 43.13 A + B

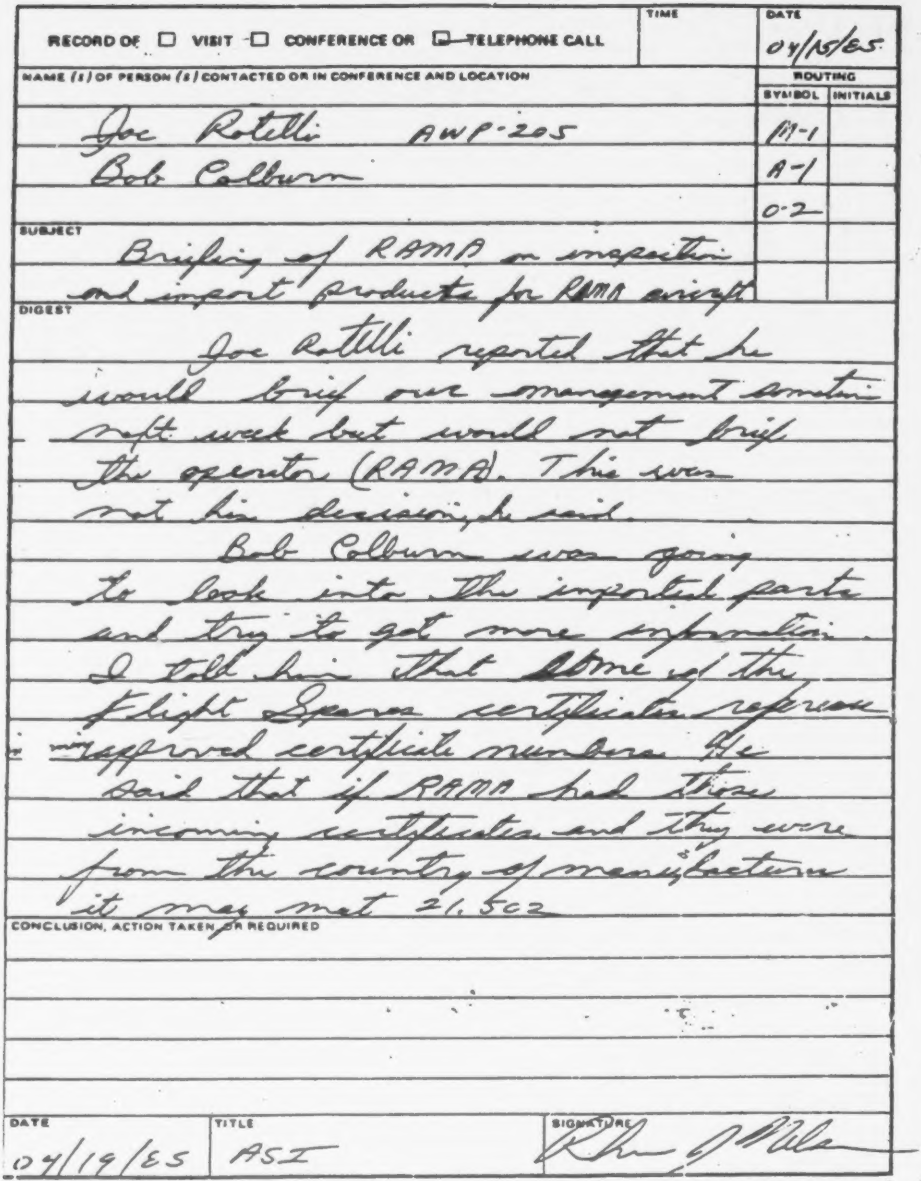
6 81 SW 330031 Status Closed Warning Letter
FAR 39.3

7. 81 SW 330043 Status Closed No Action
FAR 121.303 (d)(1)

8 82 WP 34 0028 Status Open $1,000
FAR 121.583 (A)(1)

9 83 WP 34 0009 Status Open $2000
FAR 121.38

EXHIBIT B



RECORD OF ☐ VISIT ☐ CONFERENCE OR ☒ TELEPHONE CALL

TIME

DATE 04/15/85

NAME (S) OF PERSON (S) CONTACTED OR IN CONFERENCE AND LOCATION

Joe Rotelli AWP-205

Bob Colburn

ROUTING	
SYMBOL	INITIALS
M-1	
A-1	
O-2	

SUBJECT

Briefing of RAMA on inspection and import products for RAMA aircraft

DIGEST

Joe Rotelli reported that he would brief our management sometime next week but would not brief the operator (RAMA). This was not his decision, he said.

Bob Colburn was going to look into the imported parts and try to get more information. I told him that some of the Flight Spares certificates reference unapproved certificate numbers. He said that if RAMA had those incoming certificates and they were from the country of manufacture it may meet 21.502

CONCLUSION, ACTION TAKEN OR REQUIRED

DATE 04/19/85

TITLE ASI

SIGNATURE

FAA Form 1360-33 (4-75) FORMERLY FAA FORM 1522

U.S. GOVERNMENT PRINTING OFFICE: 19__ - 570-463

①

EXHIBIT C

FAA enforcement — A double standard?

Claiming to strike an enforcement balance, FAA appears comfortable grounding small carriers while only fining the large. *Text and photo by Dave Higdon.*

The Federal Aviation Administration apparently tolerates repeated violations by large airlines with only administrative or economic punishment, when punishment is applied, while treating small carriers with a disproportionate number of certificate suspensions and revocations, *ATW* has discovered by examining FAA records.

The record of completed FAA enforcement actions from 1980 to present shows that only 0.14% of violation notices filed against large operators led to certificate actions. Small operators' violations led to certificate actions 40 times more often, or 5.6% of the total citations. Conversely, FAA levied 610 fines totalling $3.8 million against the larger Part 121 airlines compared with only 71 fines with a sum of $127,000 brought against smaller Part 135 and 121 carriers in the same period. Only once in that period did FAA consider pulling the certificate of a major or national carrier—Pan Am in 1984.

Commuter and regional airline operators have long claimed that FAA has used certificate actions more often against them, while opting for high civil fines as punishment for large Part 121 carriers. The FAA's own reports support those allegations.

It's been more than 18 months since FAA revoked the operating certificates of Provincetown-Boston Airlines, "a watershed event," Regional Airline Association believes, which stunned the commuter/regional airline industry.

In the last two years, FAA acted 17 times to suspend or revoke certificates held by small carriers. Of the 23 certificate actions taken against commuter and regional carriers during the last six-plus years, two occurred each year in 1980, 1981 and 1983. The overwhelming majority happened more recently, with seven in 1984, nine in 1985, and, at this writing, one this year.

In contrast, FAA suspended or revoked the certificate of an airline operating large aircraft six times in the past six-plus years. One of those actions came in 1980, four in 1984, and one in 1985.

Mistakes made?

Though the cry came slowly at first, the regional industry finally cried "Foul!" Public and political concerns about the safety and experience of the airline industry overall was prompting FAA to dole out its harshest penalties against those carriers least capable of defending themselves legally and politically, critics maintained.

"There exists a double standard," they said. "By grounding little airlines, FAA can turn to the public and point to how tough their enforcement practices really are."

According to Alan Stephen, executive VP, Regional Airline Association, FAA was wrong in some of its actions. "FAA made a mistake by grounding Atlantis Airlines, Flight Line and Airways of New Mexico, he claimed. "They were just plain wrong."

FAA denied these claims. "I'm quite sensitive to any appearance of a double standard in enforcing the FARs," responded Admiral Donald D. Engen, FAA administrator. "We look at the maturity and experience of a carrier when deciding what action is appropriate," he told *ATW*. "Grounding a carrier often gives them the breathing room they need to straighten things out."

But in the wake of reported numerous regulatory violations by American Airlines, Western Airlines and most recently by Eastern Airlines, those voices among regional operators pointed out that, more often than not, similar violations committed by small carriers brought swift and sure certificate actions. Only fines were levied against Western and American. FAA also has proposed only fines for Eastern, but those proposed levies total $9.5 million.

At presstime Eastern had refused to meet FAA's May 16 deadline for paying the $9.5 million fine. Eastern's charges that most alleged violations were "technical" echoed past complaints about FAA enforcement. The case appeared headed for the courts.

Does, indeed, a defacto double standard for enforcing the rules exist at FAA?

"Well, that depends upon which part of the process you examine," explained one FAA staffer. Echoing Engen, he said, "The inspectors absolutely use the same standard for deciding what are violations of the FARs.

"The difference in action comes when deciding what sanctions (penalties) to apply. You can look at the record and find those differences."

So *ATW* took that exact approach, examining records of reported violations supplied by FAA's National Safety Data Branch in Oklahoma City, Okla.

A massive eight-pound package, the report documents more than 5,000 violation reports stretching back to 1980. The report covers enforcement actions against both Part 121 and Part 135 carriers.

What *ATW* found in the report is signifi-

FAA enforcement activity since 1980

	Large 121 operators[1]	Small 135/121 operators[2]
Total carriers cited	78	122
Total violations	4,301	410
Total of all fines	$3,801,204	$127,000
Number of fines levied	610	71
Number of carriers fined	57	30
Average fine	$6,231.48	$1,788.73
Certificate actions	6	23
Threatened certificate actions	1	0

[1] 0.1% of violations listed led to certificate action. 7.7% of carriers suffered certificate action.

[2] 5.6% of violations led to certificate action. 18.85% of carriers suffered certificate action.

Source: FAA

Certificate actions by year

	Large 121	Small 135/121
1980	1	2
1981	0	2
1982	0	0
1983	0	2
1984	4	7
1985	1	9
1986	0	1
Total	6	23

Source: FAA

EXHIBIT D

Engen

cant in two ways: the clear difference in enforcement action tendencies, and the pattern of inspection oversight. From both areas, a clear picture develops.

For example, FAA's information confirms that the agency's oversight of large carriers generates a far higher number of violation reports against large carriers than against small commuter/regional level operations. It also reveals that FAA apparently tolerates a far higher degree of rules abuse by major and national airlines before shutting them down than it will tolerate of large and medium regionals.

Critics of FAA often voiced the belief that FAA prefers to fine majors rather than tamper with their certificates. In only one case found in the report did FAA appear to consider taking a major's Part 121 certificate. An FAA record dated Feb. 1, 1984, shows that the agency considered suspending Pan Am's certificate. But FAA closed that file on March 13, 1985, without taking that proposed action.

Similarly, FAA also tolerated scores—in the hundreds, sometimes—of violations of the same FAR by a large airline without levying any fine.

All this doesn't translate into conscious bias in favor of one size carrier over the other. Rather, the FAA source claimed, it illustrates many of the realities which exist within the agency. "Political and economic influence account for part of the problem," the source explained.

Although any carrier can appeal FAA charges of rule violations, a difference exists in how much of a fight different operators can afford. "We would like to keep small carriers in business, but big fines would hurt more than certificate actions," Engen said. "Big fines could put some of these small carriers out of business for good."

An airline carrying millions of passengers generating millions in annual revenue can turn to its own legal resources, Washington lobbyists, or to friends in Congress to prevent FAA from tampering with its operating certificate. But more often, FAA's own awareness of the hardship decertification brings influences its actions, the source said.

Shutting down an Eastern or American can strand thousands of passengers, force massive layoffs of the carrier's employes, and stop the flow of millions of dollars in cash. PBA's experience provides a prime example of the effects of a certificate action, albeit on a smaller scale.

"The relationship between airline staff and the carrier's primary operations inspectors (POI) and primary maintenance inspectors (PMI) plays a big role," the FAA source explained. "When dealing with large airlines, the same inspectors work next to airline employes day after day, and that familiarity can lead to a sympathetic attitude. The inspector would rather work with the airline personnel rather than against them. Small carriers may not see their PMI or POI for weeks, even months, and sometimes, that sympathetic attitude still exists."

Engen cited that phenomenon when he explained the need for special inspector teams. "I felt that POIs and PMIs had become comfortable within the organizations of the carriers they were charged with inspecting," he noted. Such inspector teams uncovered myriad FAR violations which led to shutdowns at PBA and Flight Line, and pilot groundings at Britt Airways in April.

Use of special teams created new problems for operators. Since inspectors for small carriers seldom specialize in air carrier operations, regionals have suffered when their inspectors' understanding of regulation compliance differed with the view of full-time airline inspectors. RAA believes this scenario to be the root of special teams' tendency to reverse the POI's approval.

Differing opinions

"Our special inspectors disallowed many practices approved by our regular POI and PMI," explained Flight Line's Phoebe Faggard, after FAA shut that carrier down and forced the resignation of Will Hegman, company president.

Engen acknowledged that varying interpretations can and do occur. "I want to concede that there's been a problem in the past, because, after all, inspectors are human and different people often see the same regulation in different light.

"My goal is to address this through standardization," he continued. "Re-writing inspectors' workbooks is a high priority right now," Engen explained. "This effort will have a major impact on standardizing FAA policy very shortly."

To handle its grounding, Flight Line enlisted the Congressional aid of its area representative and senator. Curiously, FAA reversed its position less than two weeks after the grounding and allowed Flight Line to return to the air, Faggard

An overview of closed enforcement actions

Judging by FAA's records, some carriers are more vulnerable to inspectors filing violations than others. While some repeatedly draw violations for the same rule, others appear to solve one problem and get cited for another.

For example, FAA records show that American Airlines received 330 violation notices in the past six years. American paid 60 fines totalling $82,614, before Sept. 27, 1985. On that date, the record shows that FAA closed 26 more violation files, with fines paid totalling $1.5 million.

Eastern Airlines received 334 citations in the same period, not counting the latest bevy of charges FAA brought in March. The 54 fines Eastern paid up to April 21, 1986 totalled $12,796.

Republic Airlines' record showed 345 violation notices. Fines totalling $11,000 resulted from 22 of those citations.

Another 11 large airlines received between 100 and 300 citations in the six-year period. They are: Flying Tigers, 115, with 19 fines totalling $66,250; USAir, 136, including eight fines totalling $7,600; Northwest Orient, 148, 18 fines totalling $18,300; Western Airlines, 156, 19 fines totalling $709,500; Frontier Airlines, 171, 23 fines for $27,950; TWA, 191, 28 fines coming to $76,700; Delta Air Lines, 200 and 12 fines for $4,900; Continental, 210, and 23 fines, totalling $20,225; Pan Am, 214, 29 fines totalling $85,000; United Airlines, 247 citations, including 28 fines totalling $35,050.

Among commuter and regional operators, daily oversight is all but nonexistent, and that apparently accounts for the differences in reported violations. For example, no carrier in this group received more than 34 violations. Aspen Airways lead the pack with 34, followed by Empire Airlines with 28. After Empire, Air Wisconsin had the next highest total with 18, followed by Wright Airlines with 17; Mid Pacific, 16; Emerald Air, 15; Horizon Air and ITR Airlines, 12; Pacific Express, 11; and Markair, 10.

Wright led in fines with $21,000 resulting from four citations. Three of those fines were levied together on March 11, 1983, for $20,000 of the total. Air Wisconsin followed in fines, paying $20,250 in five fines. One of those payments alone came to $15,000.

FAA enforcement continued

reported later. Flight Line continued to use original management systems approved by its POI, but faulted by the inspection team, she said.

FAA claimed that Flight Line's problems were quickly and easily rectified, prompting an unanswered question: Why suspend the airline's certificate if its shortcomings could be "easily and quickly" solved?

"The level of management experience and the maturity of the organization are weighed into any decision concerning enforcement action," FAA Administrator Engen explained. Flight Line had less than a year's operational airline experience. PBA's staff possessed a lifetime's expertise, thanks to almost four decades of Van Arsdale family control. With more than 35 years of continuous operation, PBA qualified for the title of "America's oldest commuter airline."

"With all those years in the business, the Van Arsdales should have known better," said Roger Myers, public affairs officer for FAA's Southern Region.

But correlating experience levels against the severity of the enforcement action appears absent from FAA's dealings at the major and national category levels.

For example, the groundings of Flight Line and Atlantis early last year were not due to unsafe operations. "Those carriers primarily had paperwork problems where they couldn't document work they had performed," explained William Berry, flight standards manager in FAA's Southeastern Region headquarters.

FAA's Engen confirmed that Western Airlines suffered from a similar paperwork problem cited in numerous violations filed in late 1985. Yet, with more experience to its credit, Western kept flying and paid a $700,000 fine. Apparently, FAA didn't consider grounding the carrier or any of its aircraft when deciding on sanctions.

American episode

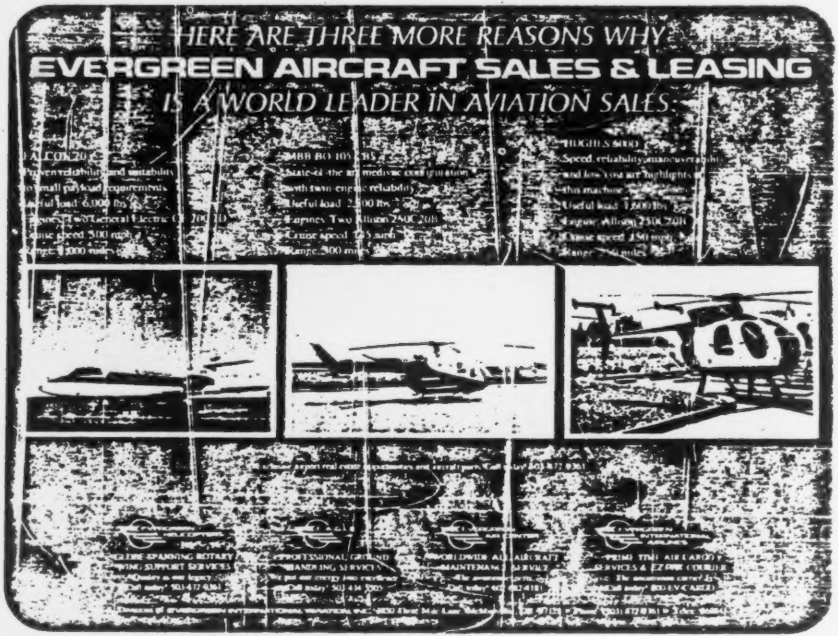
Does this mean that the more experience you have, the lighter the penalty you can expect when caught breaking the law? Commuter and regional operators certainly see it that way. They point to another widely publicized episode as additional evidence: the case of American Airlines.

FAA inspectors said American used improper parts in some of its transports—plastic pulleys in slat drives rather than FAA-approved metal pulleys. FAA did not even ground any of the affected aircraft, much less consider decertifying American for what FAA sources say was knowing, willful violations of the FARs. The penalty negotiated between FAA and American was $1.5 million, a record high at the time. American admitted no guilt in agreeing to the penalty, a type of "no-contest" plea.

Regional airline sources quickly point to FAA grounding some of their aircraft for improperly weighed fire extinguisher bottles, engines a few minutes beyond TBO limits—even disagreements concerning weight-and-balance procedures—and wonder why they couldn't just pay a fine, admit no guilt and receive time to correct the problems. "It doesn't work that way for us," complained one operator.

To a large extent, the record bears out those complaints. But Engen sees a difference between people willfully falsifying records—such as PBA's chief pilots falsifying pilot type ratings—and carriers getting caught with improper parts. "In cases like American's, it seemed that some of the aircraft came to the carrier from outside the country, where FAA regulations aren't in force," the administrator explained. "We can't get into every part of every carrier's aircraft in one inspection, but we do get them all over a longer period of time, with ramp inspections and spot maintenance checks. Where we find problems, we try to correct them."

And then comes Eastern Airlines' recent run-in with an FAA special team. Records covering dozens of jetliners were a mess, the FAA headquarters source claimed. "For example, Eastern had documents showing compliance with an AD (airworthiness directive) for its (Boeing) 727s," the


HERE ARE THREE MORE REASONS WHY
EVERGREEN AIRCRAFT SALES & LEASING
IS A WORLD LEADER IN AVIATION SALES:
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Proven reliability and suitability
to small payload requirements
Useful load: 6,000 lbs
Engines: Two General Electric CF700
Cruise speed: 500 mph
Range: 1,000 miles
MBB BO 105 CBS
State-of-the-art medivac configuration
with twin-engine reliability
Useful load: 2,500 lbs
Engines: Two Allison 250C20B
Cruise speed: 125 mph
Range: 300 miles
HUGHES 500D
Speed, reliability, maneuverability
and low cost are highlights
of this machine
Useful load: 1,600 lbs
Engine: Allison 250C20B
Cruise speed: 150 mph
Range
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source detailed. "When the gear on one of the 'retrofitted' aircraft collapsed at Dulles, our inspectors found that somehow parts removed in the retrofit found their way back onto the airplane later. The records didn't show that."

FAA proposed a new high in aviation fines for Eastern's alleged transgressions—$9.5 million. And the carrier continues to operate. "Somebody might have talked about shutting down Eastern," said a source in the Southern Region. "Evidently, nobody took that as a serious idea for dealing with Eastern. Would that be in the public interest?"

With large major and national airlines competing head-to-head in hundreds of markets, the absence of Eastern would drive thousands of passengers into the transports of competitors, he theorized. "In its current financial condition, we were afraid Eastern might not recover, financially, from a grounding."

Engen response

Engen disagreed that financial or political considerations affected FAA's decision to allow Eastern to keep flying. While he declined to comment specifically on Eastern, since the case was still pending, Engen did offer a response. "If the inspectors had found any evidence of unsafe operations, we would have to take the firmest form of action," he stressed.

But in hundreds of small communities, however, the commuter or regional carrier often provides the only air service available. Does cutting off a community by shutting down its only airline serve the public interest? Said the FAA source: "We are, after all, responsible for assuring the safety of all airlines, so the answer has to be affirmative; it's in the public's interest."

Why is it less safe for a half dozen passengers to fly in an commuterliner with questionable documentation, than it is for hundreds of passengers to fly in a jet with equally doubtful paperwork?

"We have to judge each action on the individual circumstances," Engen stressed.

Engen's conclusion that problems existed in the past brought an additional acknowledgement—the inspector work force suffered from serious overwork. With fewer people than it had at the onset of deregulation in 1978, FAA inspectors have had to watch more than double the number of airlines. Recent Congressional pressure convinced Secretary of Transportation Elizabeth Dole to take on as many as 500 additional inspectors by the end of fiscal 1987. Engen noted, "We're adding enough inspectors to offset the impact of attrition, so that the 1987 total will exceed the 1984 inspector force by 500, and many of those will be dedicated to looking at Part 135 operators. They're getting special training, rotation to special teams and field trips to Washington so that they know exactly where we're coming from here."

Hopefully, RAA concurred, these new programs for standardizing interpretations and better training for inspectors will lead to fewer cases of individuals depending on their own discretion.

One RAA-supported suggestion concerns establishing a single national office to certificate air carriers. "We have no such plans right now," Engen explained. "That is one problem we have yet to address." Action in that direction could follow completion of other FAA efforts to standardize enforcement.

A single office for airline certification would answer the last big gripe some operators have voiced. Inconsistent interpretation, once again, is the problem needing attention. Critics say that as long as local offices are responsible for granting certificates, the potential for dealing with varying views will remain.

Engen agrees. But with so many other areas to address in the short term, the creation of such a body will come later rather than sooner, if at all. "It is on my mind, though," concluded the administrator.

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DRAFT

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Memorandum

Subject: Draft Report on Audit of Airworthiness of Aircraft Parts, Aviation Standards National Field Office and FAA Aeronautical Center Depot

Date: February 27, 1987

From: Joseph E. Alleo, Regional Manager
Fort Worth, Texas

Reply to Attn of: JRA-6

To: Robert L. Goodrich, Director
Aviation Standards National Field Office
Oklahoma City, Oklahoma (AVN-1)

James E. Richardson, Director
Mike Monroney Aeronautical Center
Oklahoma City, Oklahoma (AAC-1)

Attached is a copy of the draft report on our audit of the process for ensuring the airworthiness of aircraft parts at the Aviation Standards National Field Office (AVN) and the Aeronautical Center Depot in Oklahoma City, Oklahoma. At AVN the results of the audit were discussed with the Director and his Deputy, and with appropriate operating officials, including the Manager and Assistant Manager of the Aircraft Maintenance and Engineering Division, and the acting managers of the Quality Assurance Branch and Quality Control Section. At the Aeronautical Center the results of the audit were discussed with the Director's representative, the acting Manager of the FAA Depot, the Manager of the Procurement Division, and the Manager of the Storage and Transportation Branch. [illegible]is draft is for the purpose of (1) confirming the facts presented, (2) fostering an understanding of the findings and recommendations, and (3) providing management with an opportunity to express its views prior to finalization of the report.

We would appreciate receiving your written comments to the draft report within 45 days, as provided by DOT Order 8000.1B. Your written reply should include a statement of concurrence or nonconcurrence with the findings and recommendations. If you concur, we would like to know, if possible, the specific corrective actions taken or planned in connection with each recommendation. We would like to meet with you or members of your staff to discuss matters of nonconcurrence, or any questions you may have, prior to your response.

EXHIBIT E

764-002.6000

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Your written comments will be made a part of the final audit report. Additional "auditor comments" may be added if deemed necessary. An additional 90 days will be provided at the final report stage for you to initiate any corrective actions that may be necessary. If you or your staff have any questions or would like additional information, please contact Jim Kram (FTS 334-4548).

Attachment

cc:
JA-2
JP-10

I. INTRODUCTION AND SCOPE

The Office of the Inspector General (OIG) has completed an audit of the internal control systems and procedures used for ensuring the airworthiness of aircraft parts at the Aviation Standards National Field Office (AVN) and the FAA Depot, both located at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma. Our audit objective was to determine whether all new and repaired aircraft parts acquired at the Aeronautical Center for installation on FAA aircraft meet the requirements of FAA Orders and the Federal Aviation Regulations (FARs).

The examination was conducted in accordance with General Accounting Office Standards for Audit of Government Organizations, Programs, Activities and Functions. The period covered by this audit was Fiscal Year 1986, and included a review of pertinent regulations, orders, policies and procedures, and documentation at AVN and the Aeronautical Center Depot. The internal controls evaluated included those related to verifying, processing, evaluating and storing of data supporting airworthiness of aircraft parts. The examination also included other tests of the procedures and records as we considered necessary in the circumstances.

II. RESULTS OF AUDIT

In our opinion, AVN and the Depot are not meeting the certification/airworthiness requirements specified in FAA Orders and regulations. They are not ensuring that new replacement aircraft parts are acquired from approved manufacturers and that all required serviceability data for overhauled parts are properly acquired and controlled. As a result, FAA may be invalidating its airworthiness certifications and may be installing substandard parts in its aircraft.

III. FINDINGS AND RECOMMENDATIONS

Finding- Better Controls Are Needed to Ensure the Airworthiness of Aircraft Parts Used to Maintain the FAA Fleet

The Aviation Standards National Field Office (AVN) and the Aeronautical Center Depot are not ensuring that all new and overhauled aircraft parts acquired for installation on FAA aircraft meet the certification/airworthiness requirements specified by FAA Orders and the Federal Aviation Regulations (FARS). Specifically, the AVN and Depot was not ensuring that new aircraft components were produced by approved manufacturers, and they were not adequately obtaining and controlling certificated data for overhauled aircraft parts. As a result, FAA is not maintaining the compliance essential to continued aircraft airworthiness certification, and it is vulnerable to installing unairworthy parts on its aircraft. This condition occurred because of weaknesses in written requirements and operating procedures, and insufficient monitoring of operations.

Discussion

FAA Orders 4000.3C, Certification, Maintenance, and Operation of Agency Aircraft, and 4100.24A, FAA General Maintenance Manual, stipulate that, ever though FAA aircraft is not public aircraft and is not subject to the FARs, it is agency policy that all FAA aircraft will be certificated, maintained, and operated in accordance with the FARs, unless special deviations are authorized. These Orders also require that (i) each FAA aircraft will generally be certificated with an airworthiness certificate, which in turn requires compliance with Parts 21, 43 and 91 of the FARs; and (ii) all FAA aircraft will be maintained in accordance with a continuous airworthiness maintenance program, which will provide a level of maintenance equivalent to that required for civil aircraft. In fact, the Agency has modeled its continuous airworthiness maintenance program after civil air carriers, which are governed by Part 121 of the FARs.

At the Aeronautical Center, the process of inspecting aircraft parts is generally as follows. New and overhauled aircraft parts are normally initially reviewed by the Depot receiving function, which verifies that aircraft parts requiring serviceability assurances are accompanied by appropriate documentation. Upon receipt, Depot inspectors fill out an FAA Serviceable Parts Tag (SPT), which attests to proper airworthiness and serves as a control document for the aircraft part. In some cases involving direct ship aircraft parts, AVN is the initial receiver, thereby assuming responsibility for verifying receipt of the required documents, and for completing the SPT. All documents in support of the FAA SPT are then sent to AVN Quality Assurance Branch for review and filing by aircraft part number. As parts are installed on aircraft at the Center, the mechanic completes the SPT and sends it to AVN Quality Assurance for filing by aircraft "N" number.

On November 4, 1986, the Depot carried an inventory of certifiable aircraft parts on hand covering 2,441 supply items with 9,851 parts valued at $19.7 million. These parts were identified within the total Depot supply inventory by a special handling code "Z" indicating that the parts require a determination of airworthiness.

To test the Center's control over ensuring that all aircraft parts received and installed on FAA aircraft at the Center were properly processed in accordance with governing regulations, we initially selected two different random samples. One sample was directed at parts received at the Depot, while the other sample was directed at parts installed on aircraft at AVN. Based on our preliminary observations, we later selected another sample judgmentally. A brief summary of the sampling details is presented below.

One random sample covered 49 purchase orders of new and overhauled aircraft parts received at the Depot. These resulted in shipments of 165 parts to the Depot in Fiscal Year 1986. To arrive at this sample of 49, we querried 269 separate supply stock numbers in the Procurement's computerized inventory and selected all referenced purchase orders for Fiscal

Year 1986. We later eliminated those purchase orders which were canceled, not delivered in Fiscal Year 1986, or were direct shipped to other locations.

The second random sample covered 46 aircraft parts that had been installed on several different aircraft at the Center during Fiscal Year 1986. To arrive at this sample of 46, we randomly selected 97 entries on AVN's control logs for parts issued for installation, and eliminated parts installed on aircraft not normally maintained at the Center, or parts returned to inventory.

The additional judgmental sample covered 70 priority purchases of new or overhauled aircraft parts, some of which were received directly by AVN. To arrive at this sample of 70, we searched through approximately 2200 purchase orders on file in the AVN Quality Assurance Branch, and selected: (i) all of the priority purchases of items that were listed on the Depot's "Z" listing as requiring serviceability documents (42 items), and (ii) some of the priority purchases of items not included on the "Z" listing, but obviously should have been (28 items).

The results of these samples indicate that AVN and the Aeronautical Center Depot were not adequately: (1) ensuring that all new aircraft parts were acquired from approved manufacturers, and (2) obtaining and controlling airworthiness data for overhauled parts.

1. FAA Not Ensuring That New Aircraft Parts Were Acquired From Approved Manufacturers

With the exception of standard parts (such as bolts and nuts) that conform to established industry or U.S. specifications, the Federal Aviation Regulations (Parts 21.303 and 21.305) require that all new aircraft replacement parts be produced by FAA approved manufacturers. In addition, AVN Supplements to FAA Order 4100.24A require that new aircraft parts be accompanied by proof that they were purchased from original manufacturers. These requirements are important to aircraft maintenance activities because they help to ensure that replacement parts for certificated aircraft at least meet the required specifications of the original parts, and prevent the purchase of counterfeit parts that may not be airworthy.

Neither AVN personnel nor Depot inspectors were verifying that new replacement parts purchased for installation on FAA aircraft were acquired from FAA approved manufacturers. As shown by Exhibit A, 42 percent of the random samples and 76 percent of the judgmental sample represented parts acquired during Fiscal Year 1986 from suppliers without evidence showing that the suppliers obtained the parts from approved manufacturers. The remaining items were purchased directly from original manufacturers. Therefore they were not counted as errors, even though there were no controls at either AVN or the Depot to make this verification.

At AVN and the Depot there was a great deal of uncertainty as to the requirements concerning new parts. For example, quality control inspectors indicated that they have not been concerned about ensuring that new replacement parts are obtained from approved manufacturers, even though they are required to spot check the Depot's inventory for the required proof. Other AVN personnel either indicated that they were unaware of any requirements for new parts, or that the only documentation required for a new part was documented support that it was new. The Acting Chief of the Quality Assurance Branch indicated belief that AVN personnel were generally aware of the requirement, but disregarded it because it slowed down maintenance operations. He further indicated that several years ago (1979) AVN tried to get Depot officials to agree to perform the verification on new parts, but that these officials refused because of manpower limitations. Interviews with Depot receiving inspectors and their supervisors indicated that they were not aware of any manufacturing proof requirements.

Aeronautical Center Procurement Division officials indicated that approved manufacturers and part numbers are clearly listed on the face of purchase orders for new aircraft parts. Our limited tests in most cases proved that this was true. Therefore, Depot and AVN receiving inspectors should be able to readily determine whether new parts were purchased directly from approved manufacturers or through suppliers who must furnish proof that the parts were obtained from approved manufacturers.

Accordingly, for new aircraft parts acquired through suppliers or dealers, neither AVN receivers nor Depot inspectors were verifying that the suppliers or dealers had actually acquired the parts from FAA approved manufacturers.

2. FAA Not Adequately Obtaining and Controlling Serviceability Documents for Overhauled Aircrafts Parts

The requirements for overhauled aircraft parts are contained in the Federal Aviation Regulations Part 43 entitled: "Maintenance, preventive maintenance, rebuilding, and alteration." It generally requires that contracted work for the overhaul of aircraft parts be performed by an FAA approved certified repair station. Additionally, the Regulations require that upon completion of the work the certified repair station must provide the aircraft operator with a maintenance release signed by an authorized representative of the repair station, and detailed work order information. FAA provides FAA Form 337, Major Repair and Alteration, for documenting the maintenance release and work order information. However, in lieu of the FAA form, a certified repair station may provide its own Maintenance Release Tag (MRT), and a signed copy of the customer's work order (WO) upon which the repair is recorded.

A maintenance release certifies that the aircraft part was repaired and inspected in accordance with current regulations of FAA, and that the part is approved for return to service. It is important to aircraft owners and operators because no airworthiness certificated aircraft can be returned to service without evidence that a repaired part was overhauled in accordance with required specifications. The MRT is the certified repair station's attestation of conformity with requirements, and serves as proof of the airworthiness of the overhauled part.

Work order documentation provides a written record of major repairs or alterations indicating details and approvals. It is important to aircraft owners and operators because no airworthiness certificated aircraft may be returned to service after major repairs without an adequate description of the work performed. FAA Form 337, or the customers work order, must be completed consistent with FAA Advisory Circular AC 43.9-1D, to provide a work description that is acceptable to the FAA Administrator. The work order is also important to AVN operations because under its continuous airworthiness maintenance program, AVN is required to keep all documentation relating to major repairs (overhaul of parts) until the work is superseded by another overhaul. Since certified repair stations are only required to keep copies of work orders for 2 years, AVN may not be able to acquire adequate work order information after the 2-year period has expired. This could be critical in the event of an overhauled part failure requiring analysis of prior work order information. Accordingly, adequate work order documentation is best acquired when parts are overhauled.

The FAA General Maintenance Manual, FAA Order 4100.24A, which implements Part 43 of the FARs, requires Maintenance Release Tags and work orders in support of parts overhauled by certified repair stations. The order also requires that an FAA Serviceable Parts Tag (SPT) must be attached to all new and overhauled aircraft parts received at the Center. The SPT is important because it indicates that the aircraft part to which it is attached is serviceable, and that the part had been reviewed for proper certification. Additionally, the SPT is important because it indicates the source and date of overhaul, and the part number and serial number of the part overhauled. Since MRTs and WOs are filed by part numbers and identified by serial numbers, the SPT is essential to the traceability of supporting records for parts installed on FAA aircraft.

The audit disclosed that the FAA is not adequately obtaining and controlling airworthiness documents for overhauled aircraft parts. The random and judgmental sampling of overhauled parts acquired and/or installed during Fiscal Year 1986 indicated that in many cases the FAA could not furnish sufficient documents to establish the airworthiness of the parts. Also, the sampling disclosed that many of the work orders obtained from certified repair stations did not provide sufficient detail to meet FAA standards.

As shown by Exhibit B, 38 percent of the random samples, and 56 percent of the judgmental samples contained parts with one or more missing documents. In some cases, the documents were not traceable. In the other cases, it was not possible to precisely determine whether the missing documents were

misfiled, lost or never received. However, based on our review of internal controls and discussions with operating personnel, we believe that both conditions existed.

At AVN, discussions with quality control inspectors and other operating personnel revealed that:

a. Evidence exists that some of the maintenance release tags summarized as missing in Exhibit B, had actually been received in the Quality Control Section for review. Accordingly, the documents had to have been initially received and either misfiled or lost at AVN.

b. Aircraft mechanics, when they installed replacement parts on FAA aircraft, were not always filling out the Serviceable Parts Tags and submitting them to the documentation center for filing. Since the SPT identifies part numbers and serial numbers, the traceability of the parts installed to the supporting airworthiness documents was lost. The maintenance release tags and work orders are filed by part numbers and identified by serial numbers. While the part number is normally known, the only way to obtain the serial number is through the SPT.

c. AVN personnel, when they were the initial receivers of direct ship aircraft parts, did not always ensure that work orders were received, and that all certification documents were promptly submitted to the AVN Quality Control Section for review and filing. Since there is no central receiving point at AVN for the initial receipt of direct ship items, there is no one person responsible to verify receipt and disposition of all required certification documents.

d. AVN personnel in the recent past have not considered work orders to be important to operations. Accordingly, they have not required the work orders for overhauled parts, and in some cases this has influenced some Depot inspectors in also not requiring the work orders.

e. AVN quality control inspectors have not been systematically reviewing the Depot's "Z" listing of aircraft parts requiring airworthiness determinations. The Acting Chief of the Quality Control Section acknowledged that the listing was incomplete. He also indicated that in the past the listing was updated on a piecemeal basis, whenever a mechanic complained of receiving a replacement part without an attached SPT, and review indicated that the part was not on the "Z" listing. Follow-up at the Depot indicated that the aircraft parts item manager had not been updating the listing for expendable items, or for direct ship items not normally carried in the Depot's inventory. The "Z" listing is the Depot's primary source for identifying items requiring certification. Accordingly, verification of proper certification, and acquisition of the supporting documents, could be easily circumvented because of an incomplete "Z" listing.

Exhibit D also shows that 39 percent of the work orders received by the Center from certified repair stations did not meet the FAA standards required by FAA Advisory Circular AC 43.9-1D. The inadequate work orders either did not list the replacement parts installed and/or did not adequately define the nature of the work performed.

At AVN, discussions with quality control inspectors disclosed that work orders are not reviewed for adequacy and content by either the Quality Control Section or the Reliability/Standards Section.

In summary, for aircraft parts overhauled by certified repair stations, the FAA has not always obtained all required documents, maintained an adequate records system through which supporting airworthiness records can be readily retrieved, and ensured the adequacy of work orders received.

FAA Is Vulnerable to Invalidating Its Airworthiness Certificates and Installing Substandard Parts on Its Aircraft

FAA is not maintaining the compliance necessary for continued airworthiness certification of its aircraft, and it is vulnerable to installing substandard replacement parts on those aircraft.

By installing new aircraft parts on its aircraft without evidence that the parts had actually been acquired from an approved manufacturer, or by installing overhauled parts without being able to trace the parts installed to valid and adequate airworthiness documents, the FAA is not in full compliance with the governing regulations. FAA holds itself to the highest standards in the aircraft industry, and generally requires the issuance of airworthiness certificates on its aircraft. These certificates, however, remain valid only as long as maintenance and alterations are performed in accordance with the requirements of the Federal Aviation Regulations.

In addition, FAA is vulnerable to installing substandard parts on its aircraft. By installing new parts without evidence that the parts had been acquired from an approved manufacturer, FAA cannot be assured that the design of the parts installed fully meets the airworthiness requirements of the FARs applicable to the aircraft on which the parts are installed. Officials from the Aviation Standards National Field Office and the General Aviation District Office (GADO) have advised us that bogus or counterfeit parts have been a growing and significant problem to the aircraft industry in recent years, and that this in turn increases the probability of obtaining replacement parts that do not meet the design specifications required for flying safety. Locally, we observed that in 1986, an Oklahoma City Federal Court convicted a California supplier of selling counterfeit aircraft parts to Tinker Air Force Base. During the audit, we attempted tracing some unsupported new parts from our sample back to the approved manufacturers to verify their authenticity. This attempt, however, was unsuccessful because we were unable to obtain the necessary serial numbers. Similarly, by installing overhauled parts on its aircraft without being able to trace the installed parts to valid and adequate certification

documents, FAA management cannot be assured of the airworthiness of the parts installed. According to GADO Officials, if overhauled parts are installed on an aircraft without the required certification data, the aircraft is unairworthy "prima facie."

Recently, FAA cited Eastern Air Lines with numerous violations of the FARs. Although most of these violations occurred because of failure to promptly correct deficiencies recorded on aircraft logs, at least four of the violations related to failure to prepare airworthiness releases after maintenance. The citation indicated that flying an unairworthy aircraft carries a maximum fine of up to $1000 each time the aircraft takes off.

AVN And Depot Need to Improve the Requirements and Guidelines for Performance and Review

The FAA's inability to attest to the airworthiness of aircraft parts received and installed on FAA aircraft at the Aeronautical Center is primarily attributable to weaknesses in written requirements and guidelines which do not adequately provide for specific standards of performance and review. These requirements and guidelines need to be strengthened to bring them in conformance with the Comptroller General's Standards For Internal Control In The Federal Government.

The Comptroller General's internal control standards require written documentation of agency internal control techniques over significant events, such as the verification of adequate certification of aircraft parts, and a clear communication of the duties, responsibilities, and accountability assigned to each staff member. Further, the standards require a systematic review of each member's work to the extent necessary to ensure proper performance.

Some of FAA's existing regulations and operating procedures do not provide for the specific standards of performance and review that would ensure proper certification of new and repaired parts, and traceability of records supporting the airworthiness of new and repaired parts. A summary of the deficient regulations or guidelines, along with specific references to the weaknesses requiring corrective action, is presented below.

FAA Order 4100.24A, FAA General Maintenance Manual, is the primary agency order covering the certification of aircraft parts. It provides the basic requirements upon which operating entities must devise their detailed procedures for compliance. AVN Quality Control revises the order, with final approval by the Director, Aviation Standards National Field Office, which is also located at the Aeronautical Center.

Section 14-7 of the Order requires Depot and AVN receiving inspectors to verify proper certification of aircraft parts. However, it makes no mention of the need (i) for Depot inspectors to ensure that repaired parts are properly supported by work orders as well as by Maintenance Release

Tags, even though the requirement is properly specified for AVN receivers of direct ship items; or (ii) for Depot and AVN inspectors to ensure that new parts are properly documented as having been obtained from approved manufacturers.

AVN Supplements to FAA Order 4100.24A are local AVN procedures and guidelines covering the operation and maintenance of FAA aircraft at the Aeronautical Center. Section 4-4-3 of the Supplements, relating to Section 14-7 of the FAA Order, require mechanics who install parts in aircraft to make appropriate entries on the Serviceable Parts Tags and to forward these tags to AVN Quality Control for filing by aircraft number. However, the local supplements do not provide for systematic followup review to ensure that mechanics comply with this requirement.

For aircraft parts direct shipped to AVN, Section 4-4-3 also requires the AVN receivers to ensure that repaired parts were properly certificated with Maintenance Release Tags and signed work orders. However, the Section does not require verification that new parts were obtained from FAA approved manufacturers.

Section 6-2-9 of the Supplements requires AVN to ensure the proper serviceability of all aircraft parts directly shipped to AVN. Yet, there is no provision for a central AVN receiving point, where responsibility can be fixed to ensure that certificated documents are in fact received and submitted to Quality Control for review.

Section 6-2-9 also requires AVN Quality Control to periodically spot check aircraft parts in storage at the Depot warehouse to ensure that (i) all parts had been tagged with Serviceable Parts Tags, (ii) new parts received by the Depot contained proof of having been obtained from an FAA approved manufacturer, and (iii) repaired parts received by the Depot were supported by Maintenance Release Tags and signed copies of the contractor work orders. However, the Section lacks specific guidelines covering the frequency of review, reporting, and followup actions. The Section is also deficient in not providing for oversight of (i) the AVN receiving function for direct ship items, (ii) the mechanic requirements to annotate and forward Serviceable Parts Tags for filing, and (iii) the Depot's "Z" listing of aircraft parts requiring serviceability data. With automation of the Depot warehouse, extensive revision to Quality Control's monitoring methods will be necessary.

Section 6-2-20 of the Supplements requires AVN Quality Control to acquire all certification documents from Depot and AVN receiving, and to review them for adequacy and validity. However, the section does not specifically indicate what should be done to accomplish this task in an effective and efficient manner.

AC Order 4650.18, Storage and Transportation Operations, is the primary Aeronautical Center order covering the receipt of aircraft parts at the Depot. Section 3 of the Order requires Depot inspectors to identify and to

ensure the proper serviceability of aircraft parts. However, the Order is not specific in telling inspectors exactly what they must do to ensure proper serviceability of new and repaired parts received. It merely refers the inspector to FAA Order 4100.24A and to the purchase order.

The AC Order is also deficient in not providing sufficient guidance to Depot inventory control managers to maintain a complete and accurate listing of aircraft parts requiring certification. Except for providing a "Z" code to identify aircraft items in the inventory, there are no specific instructions to provide controls needed to add or delete items from the listing and to coordinate this activity with AVN Quality Control.

The recommendations in this report will aid FAA in ensuring that its airworthiness certificates remain valid and that FAA is in compliance with the FARs, as well as its own orders and directives.

Recommendations:

To ensure that all aircraft parts meet the required airworthiness requirements, we recommend that the Depot and AVN clarify their internal operating procedures for inspecting and accepting aircraft parts and maintaining a traceable record of required documents. As a minimum the Depot and AVN should clarify their respective orders and operating procedures which will:

1. Require proof of purchase from approved manufacturers for new aircraft parts.

2. Clarify the requirements for work orders, the quality of work orders, and the type of reviews to be performed.

3. Provide for adequate supervisory oversight to ensure that requirements are met.

4. Provide for a more structured and complete review of the flow of certified data by AVN Quality Assurance to ensure the proper receipt, inspection, and filing of required documents.

5. Provide for developing and maintaining a complete listing of aircraft parts requiring an airworthiness determination ("Z" listing).

IV. BACKGROUND

The Aircraft Maintenance and Engineering Division (AVN-300), is one of four divisions within the Aviation Standards National Field Office, which is located at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma. The Division provides for the maintenance, modification, and engineering associated with the FAA fleet of 50 aircraft, which is physically located throughout the continental United States, and in Germany, Japan , and Hawaii. As a part of its responsibilities, AVN-300: issues FAA manuals for aircraft maintenance and flight operations; performs or arranges for maintenance, modification, and overhaul of FAA aircraft; monitors and evaluates the fleet maintenance system; and provides transportation of aircraft parts and supplies to maintain the agency aircraft.

Although AVN-300 contracts substantial portions of the worldwide need for maintenance, modification, and overhaul, it does maintain FAA maintenance facilities at the Oklahoma City Aeronautical Center and at the Atlantic City Technical Center. In addition, it provides equipment and technical guidance for limited line maintenance at 8 of 9 Flight Inspection Field Offices.

To support its worldwide field maintenance facilities, AVN acquires replacement aircraft parts through the Aeronautical Center Procurement Division. Most of these new and overhauled parts are stocked in inventory at the Aeronautical Center Depot, but some are direct shipped to field locations. During Fiscal Year 1986, the Depot expended about $5.5 million for the purchase and overhaul of aircraft parts (excluding engine overhauls). The Depot receiving function provides most of the services that verify that aircraft parts received are supported by airworthiness certification documents. The Quality Assurance Branch at AVN-300 ensures the adequacy of airworthiness documentation, and maintains the necessary supporting records system.

During Fiscal Year 1986, AVN-300 budgeted $16.4 million for total operations. This included about $9.4 million for 254 full-time personnel equivalents at its Oklahoma City and Atlantic City maintenance facilities, and about $4.6 million for contract inspections, repairs, modifications, and engine overhauls. During the same fiscal year, other AVN divisions budgeted about $1.2 million for contract inspections and repairs.

The certification of aircraft parts are primarily governed by the Federal Aviation Regulations, Parts 21, 43, and 91, and by FAA Order 4100.24A, FAA General Maintenance Manual.

FOR OFFICIAL USE ONLY

EXHIBIT A

SUMMARY AND RESULTS OF RANDOM AND JUDGMENTAL SAMPLING
NEW PARTS

	TOTAL SAMPLE	TOTAL ERRORS (1)	INITIAL REVIEW SOURCE (2)	
			DEPOT	AVN
SAMPLE ONE (a) RANDOM	89	38	38	0
SAMPLE TWO (b) RANDOM	4	1	1	0
TOTALS	93	39	39	0
ERROR PERCENTAGE	42%			
SAMPLE THREE (c) JUDGMENTAL	34	26	16	10
ERROR PERCENTAGE	76%			

(a) Selected from aircraft parts received by Depot during FY 1986. The total sample contained 165 parts, but only 89 were new.

(b) Selected from logs of parts installed on aircraft at the Aeronautical Center during FY 1986. The total sample contained 46 parts, but only 4 were new.

(c) Selected from purchase orders on file at AVN. The selections represented special purchases for AVN rather than for depot stock. The sample contained 70 parts, but only 34 were new. Since all of these parts were priority purchases, it is likely that all were installed on FAA aircraft. We tested nine and verified the installation.

(1) There are no review procedures in place at the Depot or AVN to ensure that new parts come from approved manufacturers. However, we counted an error only when the FAA purchased the part from a supplier, and the Center's receiving function did not verify that the supplier acquired the part from an FAA approved manufacturer. With one exception, the parts not counted as errors were purchased directly from an approved manufacturer.

(2) The Depot is primarily responsible for the receiving of aircraft parts. However, AVN may occasionally be the initial receiver, thereby assuming the responsibility for the certification review. AVN has no central receiving function where responsibility for certification review can be fixed.

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EXHIBIT B

SUMMARY AND RESULTS OF RANDOM AND JUDGMENTAL SAMPLING OVERHAULED PARTS

	TOTAL SAMPLE	MISSING DOCUMENTS (1) MRT	WO	SPT	TOTAL ERRORS	INADEQUATE WO (2)
SAMPLE ONE (a) RANDOM	76	23	23		46	20
SAMPLE TWO (b) RANDOM	42	17	22	11	50	5
						--
TOTALS	118	40	45	11	96	25
UNSUPPORTED PARTS (d)					45	

ERROR PERCENTAGE					38%	

SAMPLE THREE (c) JUDGMENTAL	36	10	20		30	10
UNSUPPORTED PARTS (d)					20	

ERROR PERCENTAGE					56%	
					---	--
TOTAL INADEQUATE WORK ORDERS						35
TOTAL WORK ORDERS IN SAMPLE						89
ERROR PERCENTAGE						39%

(a) Selected from aircraft parts received by Depot during FY 1986. The total sample contained 165 parts, but only 76 were overhauled parts.

(b) Selected from logs of parts installed on aircraft at the Aeronautical Center during FY 1986. The total sample contained 46 parts, but only 42 were overhauled parts.

(c) Selected from purchases for AVN. The selection represented special purchases for AVN rather than for depot stock. The total sample contained 70 parts, but only 36 were overhauled parts. Since all of these parts were priority purchases, it is likely that all were installed on FAA aircraft. We tested 9 and verified the installation.

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DRAFT

(d) Some parts were charged with more than one missing document. This total summarizes all parts with one or more missing documents.

(1) Refers to Maintenance Release Tags (MRT), Work Orders (WO), and Serviceable Parts Tags (SPT). It was not possible to precisely determine whether the documents were lost misfiled or never received.

(2) The work orders received were not in sufficient detail to meet the requirements of FAA Advisory Circular AC 43.9-D, dated 09/05/79.

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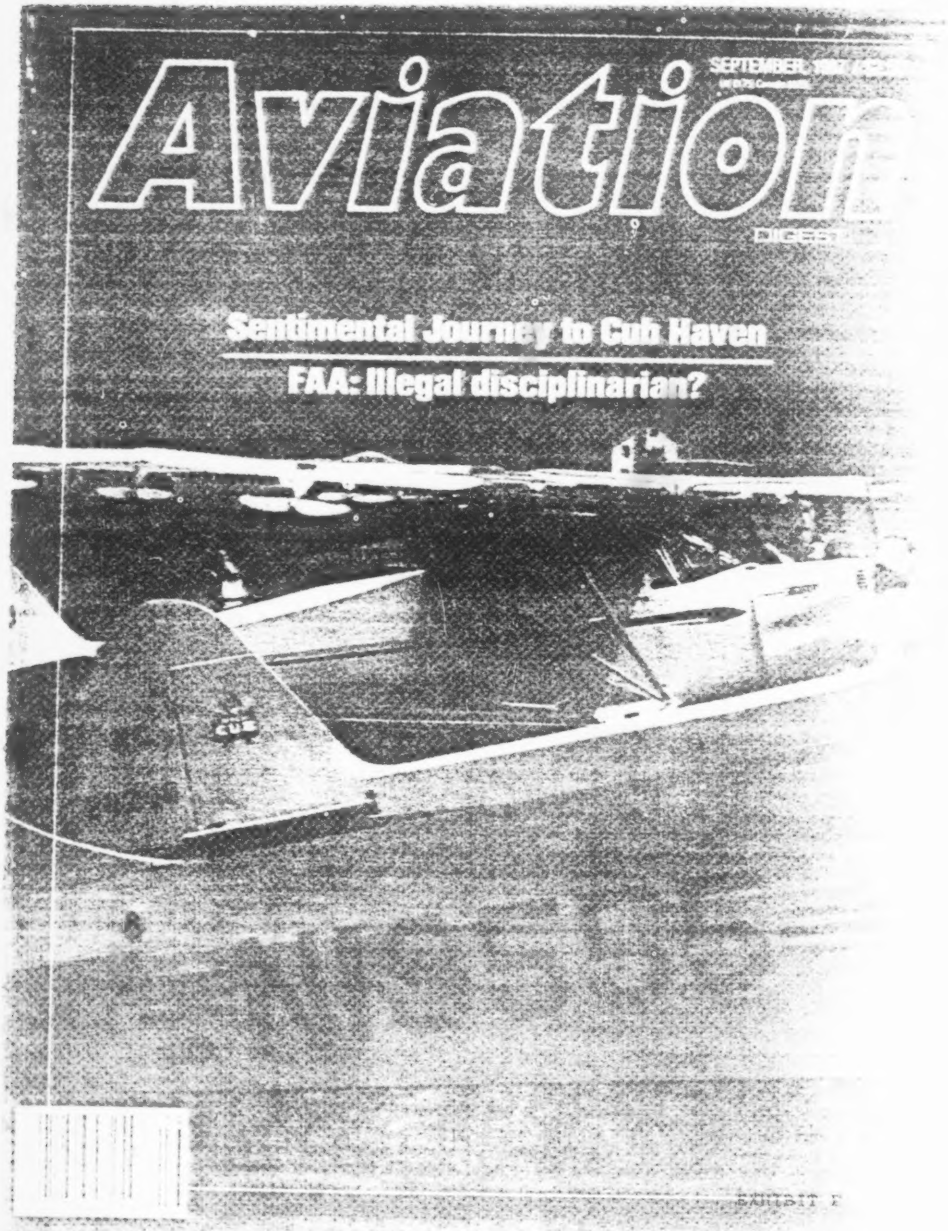

SEPTEMBER,

Aviation

DIGEST

Sentimental Journey to Cub Haven

FAA: Illegal disciplinarian?

EXHIBIT E

Though federal agencies prefer to call them "remedial sanctions," license revocations and suspensions have been used as disciplinary measures for years by the FAA. A former FAA attorney charges that the FAA's discipline ignores due process and that the license sanctions which have been used for decades have

No basis in law

by Lawrence B. Smith

The use for over six decades now by the Federal Aviation Administration and predecessor agencies of certificate suspension and revocation as a sanction or punishment imposed on account of violations of safety rules has never had any basis in law. A startling charge? Certainly, but to underscore the truth of it, we suggest an exercise in "What if."

What if Congress was just now undertaking to regulate aviation for the first time?

What if the FAA administrator proposed to a congressional committee holding hearings on the proposed legislation that for safety violations it authorize two separate tracks of justice:

1. Civil penalties where, failing to compromise with the pilot, mechanic or air-taxi operator, the government would have to initiate suit in federal district court, either could demand a jury trial, and the worst that could happen would be payment of a money fine with no threat of jail if you couldn't pay it;

2. Certificate (license) suspensions and revocations, where FAA regional counsel would order the penalty before any trial, and the pilot would have the burden of having to appeal to the National Transportation Safety Board for a trial, or lose his license on the spot. There he would get a one-man administrative hearing, and the only punishment would be against his license, regardless of how harsh its effect might be, like losing several months' pay, even his job.

What if the administrator then proposed that the FAA lawyer who initiates the case should have sole discretion to choose the track on which to prosecute it.

What if, to put it another way, he said, "We insist on having the power when we initiate a violation case, before the accused has even had a trial, to set in concrete the kind of penalty he'll suffer and whether or not he'll ever have a chance to exercise his right to demand jury trial."

What if the administrator told the congressmen: "We urge you to enact a statute for civil penalties, but don't see any reason for you to do that for certificate sanctions. All we'd like is your informal approval, we don't think it's necessary to have a statute that warns pilots, mechanics and operators that they can lose their license for safety-rule violations."

What if he further testified, "We intend to adopt a rule that warns pilots they are subject to civil penalties for violations (although we won't use the required notice and comment procedures of the Administrative Procedure Act (APA)), but we don't see any need to have such a rule, or even to publish a notice in the Federal Register, that would tell certificate holders their licenses are at risk for violations. They can easily learn about the system by word of mouth around the airport. And it would accomplish nothing to allow them to comment on how this certificate system should work."

"We see no need, either, to establish criteria that would tell one pilot why we take his license and put him out of a job for 90 days and cause him to lose thousands in income, but allow another, who commits the same sort of violation, to pay a $250 fine and continue to work.

"Nor do we think we should have to explain why we put a small airline out of business for the same violations committed by the majors, who we'll allow to pay money penalties and continue operating

"Our staff recommends, and I agree, that we use the certificate track 67 percent of the time with certain general aviation pilots, which include air-taxi, commuter and corporate pilots. But with private and student pilots, we'll go to 87 percent. We're aware, of course, except for serious cases like drunk driving the money fine is traditional. But should a pilot believe himself not guilty or our fine too great, and refuse to pay, processing civil penalty cases through U.S. Attorneys is slow and cumbersome, jury trial expensive, and often those officials don't think we have a good case so don't want to bother with it.

"Airline pilots, well, they have high salaries, so we'll go 20 percent certificate action (for the worst cases) and use civil penalties for the rest.

"I realize the competence, aviation knowledge and temperament of our regional counsel who'll initiate these cases varies widely so these powers can be misused, but that's a risk pilots will have to accept as the price of holding an FAA certificate.

"As a matter of fact, neither I nor my legal staff see any need to put our enforcement policies into rules. For example, when a pilot commits a violation, we plan to advise the NTSB law judge at the hearing if the man had any prior violations so he'll uphold a greater penalty than he otherwise would. It won't bother us that the pilot's already paid the penalty for the first violation, and we don't see any purpose in warning him we are going to use it so that he can come prepared and explain it.

"Once we start a certificate action against, say, an air-taxi pilot, if he can convince our lawyers of his good intentions and that losing three months' salary might cause him to lose his home, or not be able to pay for medical care for his child, we may let him pay a modest civil penalty.

"If neither he nor his attorney know that they can informally ask us to consider a switch to a money penalty, that may have unfortunate consequences, but that's the price of ignorance. My lawyers tell me there's no reason we should have to put this policy in a rule so that everyone could know about it.

"And my lawyers tell me that the fact the pilot would have the right to refuse to pay a money fine, and force trial in federal court where he could demand a jury, were we to start his case as a civil penalty in the first place, though this may seem inconsistent, won't keep us from employing this procedure. It is to his benefit, and in any event my chief counsel insists we should have the authority to determine when and if he can exercise his right to "demand" a jury trial.

"We don't intend to leave our rulebook blank, however. We propose to have a rule about suspending or revoking certificates after reinspecting an airplane or reexamining a pilot, should either turn out to be unqualified. But we don't see any reason to put it through APA rulemaking and allow public comment, nor say anything in it about violations.

"And we propose that certificate actions be tried by an agency whose primary mission is to investigate aircraft accidents and whose members will often see bodies stacked up at the scene. We think they'll be objective and dispassionate in determining guilt, legal issues and amount of punishment."

Sound absurd? Of course! Were the administrator to really say these things to Congress, he'd be laughed all the way back down Independence Avenue.

Yet this is precisely the way FAA enforcement works!

Make no mistake, any claim that Congress has ever given the FAA or predecessor agencies the power to suspend or revoke a certificate as punishment for the violation of a safety rule, and choose between two tracks of justice, is utterly false. FAA officials cannot point to any request for it ever made to Congress, they cannot point to any hearings ever held on a bill proposing it. Yet since 1926, and especially during the past 28 years, agency officials have suspended or revoked more than 60,000 pilot, mechanics, air-taxis and commuters for alleged violations, when they have no statute, not even a regulation, which so much as hints they may do that!

How did this happen in a country dedicated to the Rule of Law?

The system was instigated in 1926 by zealous officials who refused to live with the system Congress had just enacted. It has been perpetuated by their successors through a deliberate coverup, and by others who lack courage to admit the illegality and do something about it.

Decades after the fact, an appeals court, in an opinion barely one page long, upheld it. That opinion was based on a gross mistake of fact that renders it valueless on its face, and it reflected the court's reluctance to overturn a longstanding enforcement system.

Those seeking to attack punitive certi-

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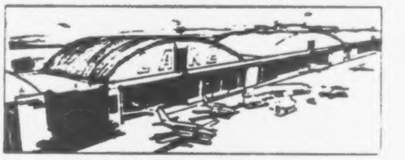

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ficate sanctions have overlooked the Administrative Procedure Act (APA). It mandates that: 1. agencies may use only those sanctions specifically authorized by Congress; 2. they must promulgate substantive policies as rules and allow the public to participate in doing that, at the least publish the policies in the Federal Register, or forfeit the right to take punitive action. FAA ignores these commands.

Bear in mind, FAA lawyers concede that most violations are inadvertent, 99 percent first offenses. Then picture the uproar were the administrator to go to Congress today and propose that 87 percent of private and student pilots be punished by suspension. Think what would happen if someone suggested that, rather than money fines, for autos!

Bear in mind, Senator Pat McCarran (McCarran Field, Las Vegas), sponsor of the Administrative Procedure Act called it: "(A) bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government. It is designed to provide guarantees of due process in administrative procedure. ... Even the ordinary operations of administrative agencies are often difficult to know, and undoubtedly there have been litigants before government agencies who have received less than justice because they were not fully advised of their rights or of the procedure necessary to protect them.

Bear in mind, he said this in 1946, yet even today FAA has only a single regulation which deals with suspension and revocation, FAR 13.19. But it says naught of violations, talks only of qualifications, and for that reason is misleading, and has never been lawfully adopted in accordance with APA procedures. Any concept of due process requires rules.

How did all this come about?

Congress in the seminal year of 1926 did what we would expect, it gave much thought to how rules should be enforced. The Senate chose the civil penalty scheme; the House made rules violations crimes, with up to $500 fines, and/or 90 days in jail. The Senate version was chosen. At no time did Congress then or ever consider license sanction or administrative trial for violations.

Crimes have always had a right to jury. So there'd be no mistake about that for civil penalties, Congress spelled it out in the Act. Either way, the accused was to get a trial in federal court.

The Air Commerce Act of 1926 allowed the Secretary of Commerce to suspend or revoke for lack of qualifications, but said nothing of violations. This is also true of the 1938 and 1958 Acts.

In spite of the fact the civil penalty with right to jury enforcement scheme was clearly spelled out in the 1926 Act's legislative history, Commerce officials stepped out on their own and promulgated a set of rules which provided: "Pilots' and mechanics' licenses will be suspended or revoked for (A) Violating any provision of the air commerce act of 1926 or these regulations. ... (F) Violating air traffic rules."

Why would these men create an alternative system that had no basis in law, especially in the face of a legislative mandate otherwise? They did it because they could see, even if Congress hadn't, that the civil penalty system had serious weaknesses which could allow some to escape punishment. U.S. Attorneys complained to Congress that criminal cases would overload the courts and be long delayed, whereas, civil penalties could be quickly settled by compromise. But they and Congress overlooked the drawbacks.

> *"Ever since, FAA lawyers tell the public that suspension is not 'punishment', but a 'remedial' sanction."*

Commerce officials knew the average penalty was likely to be modest — for several years it was only $25. Under the 1926 law, once they put a price on the violation, that was the limit they could sue for. They knew such small sums weren't going to excite prosecutors. They worried that once pilots found out the U.S. Attorneys might not take their case or it could be dragged out, and, at worst, they'd only have to pay the 25 bucks, they'd ignore the matter and escape punishment.

The coverup started on day one. Commerce officials, in order to paint it as something different from what it really was, slipped the suspension/revocation violation rule in among qualifications matters in their rulebook, rather than put it where it belonged, in the part titled "Penalties." Ever since, FAA lawyers tell the public that suspension is not "punishment," but a "remedial" sanction. They do this to obfuscate the fact that certificate action is an alternative penalty to a fine, the choice of track being their's alone, thus determining your right to jury.

"Remedial" has always been patent nonsense. Other officials called a spade a spade. Early Commerce Department publications list suspensions and fines together as penalties. So does FAA's official history. All FAA enforcement manuals since 1960 talk about suspensions as punishment. If FAA lawyers have now stopped this buncombe, it is only because my law review article exposed the practice for the sham it is.

Even NTSB officials play this shoddy game and call suspensions "remedial sanctions." To understand how pervasive the coverup is, even though the Board now dockets almost one thousand FAA "violation" cases a year, nowhere in related rules does it use that term.

1938 was a landmark year for the coverup. Congress passed the Civil Aeronautics Act of 1938 which created a five-member Civil Aeronautics Authority. (Split in 1940 into the Civil Aeronautics Board (CAB), which remained independent, and the Civil Aeronautics Administration (CAA), which went back to Commerce.)

No new enforcement powers were created, but the 1926 license clause was rewritten in 1938 with more detail into sections 602 (issuance of certificates) and 609 (suspension and revocation). (These were carried over into the Federal Aviation Act of 1958.)

The record doesn't show who or why, but someone slipped into section 609 a kicker, a clause that in obtuse language said an airman's license couldn't be revoked except for the same reasons that would allow the Authority to deny its issuance. It was interpreted to mean that revocation could only be used for lack of qualifications, not as a sanction for violations. (It was mysteriously dropped in '58, but the Board said it would follow it anyway since there was no explanation by Congress why it had been.)

This put the bureaucrats who'd been using revocation as a penalty in a quandary. They'd just codified their 1926 punishment rule in 1938's seminal edition of the Code of Federal Regulations. To drop revocation now meant they'd have to go public and ask the five Authority members to amend the rule. They knew this risked exposing their lack of authority, so they didn't.

When 1940 rolled around, and in what was clearly malfeasance, without Authority members' knowledge, they dropped the entire rule from that year's CFR. It has never been replaced. This is why there's no rule today that tells airmen their certificates are at risk for safety violations.

The coverup's highwater mark came in 1958. FAA officials (transformed from the old CAA) were required to start over and promulgate all new regulations for the agency. Under the APA this meant they were supposed to publish NPRMs which explained the legal and practical basis of any rule, and give the public a chance to comment. To avoid exposing their lack of authority for certificate sanctions and the fact they'd once had a rule but dumped it, they bypassed rulemaking procedures and simply published their entire set of enforcement rules in the Federal Register, without explaining why the agency failed to use the NPRM process.

The law cases FAA lawyers point to to bolster their claims are part of the coverup. Early on at FAA in 1967, I asked my branch chief how agency lawyers could choose whichever track of justice they wanted for a violation. Since section 901 of the Federal Aviation Act provides that "any" violation "shall be" subject to a civil money penalty, and section 903 the right to "demand" jury trial, having the certificate track to choose as an alternative put the lawyer in the position of deciding whether or not the airman ever got his right to jury. That didn't make sense. His response: "The courts have approved it."

True, but those decisions are among the worst in history. They were gained by dissembling, if not fraud, on the part of agency lawyers, and by the startling ineptitude of opposing lawyers.

Three decades elapsed before an attack was mounted. Wilson v. CAB and Hard v. CAB came down from the appeals courts in 1957, Pangburn v. CAB in 1962. All were airline captains, all represented by ALPA lawyers. The latter two took their lead from Wilson. Although barely a page, that decision became the touchstone.

All are based on a gross mistake: those courts believed that certificate sanctions started with the 1938 Act. They were totally unaware that the system in fact started in 1926. Although they agreed that qualifications were not at issue, none understood that the suspensions were being imposed strictly as a "penalty." The Hard court even chastised Captain Hard for using the term.

At issue was whether or not Congress had ever authorized license suspension as a sanction for violations. The logic is basic: if the system really began in 1926, the only possible relevance the '38 Act could have had was if it had somehow modified or clarified it. The argument should have been conducted in the timeframe of 1926. Had it, the Air Commerce Act legislative history is so clear that only civil penalties were authorized, the government would have lost.

"Western Region counsel underscored why: 'If we told pilots how easy it is to go to trial . . . we'd be swamped . . .' "

The startling fact is that the government lawyers in their brief told the court and ALPA lawyers the system did start in 1926. They even cited the 1926 Rule and said that all Congress intended in 1938 was to pass the system through as it was. But they wrote such a clever brief they made it sound like they were arguing for 1938, without really saying so.

All this sailed over the heads of the Wilson court and ALPA lawyers, who in their reply brief continued their focus on 1938 and to argue constitutional issues. Had they recognized what they were being told, they would have rushed to the law library, found and cited the 1926 legislative history.

What the Wilson court was doing was looking for any peg on which to hang a decision that would uphold this by now longstanding enforcement system. The judges plucked vague language out of section 609, "if the interest of the public so requires," and said it was intended as a broad grant of power. This was nonsense. Congress had written a detailed act, why would it create a whole new system with such vague language? Why would it talk about reinspection and reexamination, but not speak directly about violations? Anyone who can parse a sentence can see that the phrase is a conditional subsequent to first reinspecting an aircraft or reexamining an airman and was an excuse for the Administrator not to take action even though technically warranted.

Ever since, the claim of FAA lawyers has been that the Administrator can suspend or revoke anytime he thinks it's in the interest of air safety and the public. But this language wasn't in the 1926 Act, so it couldn't have been the source of power anyway.

This triad of cases has no value in any event because the APA issues weren't raised. Failure to promulgate the punitive certificate sanction system as a rule, or even simply to publish it in the Federal Register, is an absolute defense. So is lack of specific Congressional authorization for suspension sanctions.

The coverup continues. In June 1980, while at GAO, we met with top FAA lawyers who'd been advised by letter of these issues — and many more. When I asked the deputy chief counsel why FAA didn't have a violation/suspension rule, he responded, "Oh, everybody knows how the system works anyway." FAA lawyers keep citing Wilson, although they know it has no validity.

Understand the mentality we are dealing with: lawyers who are hired, promoted and fired by the chief of police! In 1969 I had to sue the agency under the Freedom of Information Act to get them to release their enforcement handbooks to the public, which even today are the only source of information.

FAA has never done anything to explain to pilots how easy it is to go to trial before the NTSB, that there are no court costs, that the Board won't increase the FAA penalty, only affirm or reduce it. During a GAO interview, the Western Region counsel underscored why: "If we told pilots how easy it was to go to trial at

NTSB, we would be swamped with trials."

Why won't ALPA and AOPA do anything? They are mirror image bureaucracies to FAA who don't want to risk their many ties to the agency by helping to expose what will come to be seen as one of the great abuses of power in the history of the federal bureaucracy.

Certificate sanctions cause real grief. A typical example I investigated is the helicopter pilot, with 2,000 hours of violation-free combat and civilian flying, who allegedly took a TV cameraman in too close to the Denver Bronco stadium to get the "good" shots they'd been instructed to of the arriving crowd. Nothing happened, but several people felt threatened and complained. In a brutal abuse of power, FAA officials ordered an emergency 180-day suspension. (It was nonsense to suggest the man was an "immediate threat to the public," and would go right back and do the same thing after the hassle it caused, but FAA lawyers are quick to react to publicity. Grounded immediately and without a job, the man couldn't afford an attorney. The NTSB law judge rubberstamped the 180 days.

An FAA lawyer told me that had the helicopter been 100 feet further away from the top of the stadium and 10 miles per hour faster, it'd been a tough case to prove. The pilot and his wife both graduated from college in Denver, her mother lived there. He not only lost half a year's wages, $7,200, but lost his job when his sympathetic employer couldn't hold it open that long, and was forced to move his wife and two infant daughters out of state to find another. There isn't a civilized person alive who wouldn't have thought a fine of $500, even $250, sufficient punishment for what was at worst a mistake in judgment.

Right to jury trial is sacred. FAA officials' claim that they can take it away from you is a canard, reminiscent of the Big Lie technique. They make it several thousand times a year.

If you want to do something about it, write your congressman with a copy of this. Ask him to urge Rep. Dan Glickman, chairman of the House subcommittee on Administrative Procedure, to hold hearings. FAA officials get away with what they are doing only because they ignore the Administrative Procedure Act. Had they ever explained to the public in an NPRM how their enforcement program worked, and asked for comment, it would have brought it down on their heads decades ago. ■

"Why won't ALPA and AOPA do anything? They are mirror image bureaucracies to FAA who don't want to risk their ties to the agency . . ."

Lawrence B. Smith is a former FAA attorney. He now practices law in Tucson, Ariz. Mr. Smith authored an article on FAA certificate sanctions for the Transportation Law Journal of the University of Denver's College of Law. In 1980, he was consultant to the U.S. General Accounting Office (GAO) on legal aspects of FAA enforcement. As a pilot, he holds a certificate for commercial, CFI, multiengine and instrument.

Aviation Digest welcomes its readers views on any and all aviation subjects, for inclusion under the Letters to the Editor heading. All submissions must be signed and include your address and phone, although we will withhold your name and address on request.

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follow-up

The August 1986 collision of an Aeromexico jetliner and a Piper Archer over Southern California was the fault of an outdated air traffic control system that pays inadequate attention to smaller aircraft, said the National Transportation Safety Board.

The two planes collided over the Los Angeles suburb of Cerritos Aug. 31 and killed 82 people, including 15 on the ground. Five houses were destroyed and seven others were badly damaged by falling wreckage and fire that resulted from the crash.

The crash occurred as Aeromexico Flight 498, a DC-9 carrying 58 passengers and six crewmembers, was preparing to land at Los Angeles International Airport. The jetliner was under direction of air traffic controllers, but the Piper was not, said the board. The Piper was improperly entering restricted airspace without the required altitude-reporting transponder, said the board.

While it normally attributes the probable cause of an aircraft accident to a specific error in pilot actions, air traffic control procedures or aircraft functioning, the board decided in the case of the Cerritos tragedy to focus the blame on the nation's decaying air traffic control system.

The board cited the unauthorized intrusion by the private plane into restricted air space and the "limitations" of relying on pilots to avoid collisions by watching the skies for other planes.

But the NTSB opted to emphasize the broader, philosophical reasons of the accident rather than cite error by the air traffic controller or either of the two pilots.

"We've got to change the priorities," said board member John Lauber. "If we don't, we're going to continue to have these accidents."

Safety board Chairman Jim Burnett disagreed with his four colleagues, adding a separate dissenting statement to the final report.

Burnett said that the pilot of the private plane had enough time - 90 seconds - to see the larger jetliner in his path and could have avoided the collision. Board investigators determined that the airliner crew had only 15 seconds to avoid the crash after sighting the small plane.

The NTSB is currently investigating three other collisions, which are responsible for 17 deaths this year. One of the other accidents, in which a private plane and a commuter airliner collided over a suburb of Salt Lake City, also occurred in restricted airspace.

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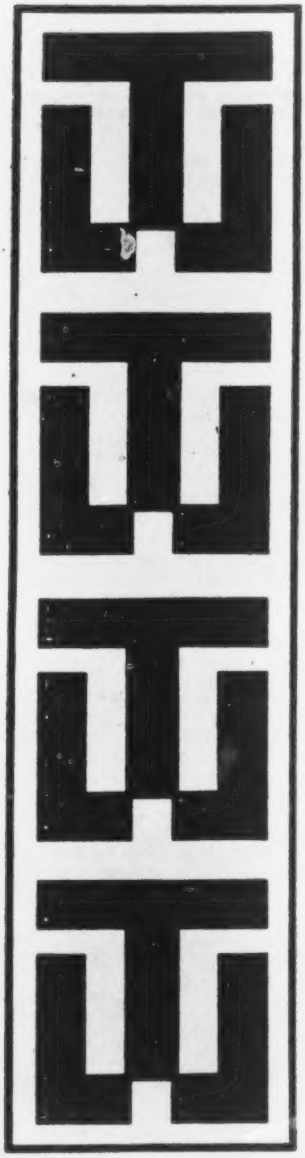

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Volume 14, Number 1 1985

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FAA Punitive Certificate Sanctions: The Emperor Wears No Clothes; Or, How Do You Punish A Propeller?

LAWRENCE B. SMITH*

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VII CONCLUSION 98

I. INTRODUCTION

Overlooked in the mass of information continually produced by the Federal Aviation Administration (FAA) is a set of statistics published by the Office of Chief Counsel that should be of special concern to pilots and mechanics.[1] These numbers tell us that of 4,000 safety enforcement cases closed by legal action each year, in about 2,400, or 60%, licensees have their FAA certificates suspended or revoked for violation of a safety rule.[2] The balance result in civil money penalties.[3] For private and student pilots (i.e., non-professionals), the proportion of suspensions and revocations rises to an astonishing 87%, the balance resulting in civil money fines.[4] These sanctions are imposed through the use of two entirely separate and independent systems of justice, one administrative, the other judicial. Every year as many as 700 men and women who hold commercial pilot, air transport pilot or mechanic licenses (certificates mandatory for their employment) are suspended for periods up to one year.[5] Aside from the severe monetary loss, suspensions often cause the person to lose his job and substantial inconvenience for employers, particularly the smaller operator who must replace him.

Since 99% of all FAA enforcement cases are first offenses,[6] and generally involve inadvertent violations of traffie and other technical safety regulations[7] which have no criminality attached,[8] the question arises: why is it that such a large proportion of these cases are routinely resolved by means of a punishment far too severe for the offense, rather than the traditional money fine? The answer is that Congress has never authorized use of license suspensions and revocations as punishment for violations of air-safety regulations, nor their imposition in an administrative forum.

In support of this theme are the following propositions: 1) The only

time Congress considered what kind of enforcement system to provide for air-safety violations, it chose a civil money penalty scheme with the right to a jury trial; 2) The few cases that have upheld the legality of FAA's punitive certificate sanction system are all based upon a fundamental error concerning legislative authorization; 3) This error has been perpetuated by government aviation officials who are violating the public trust by refusing to correct it; 4) This behavior is part of an ongoing effort to cover up lack of legislative authority for certificate penalties; 5) A major part of this coverup is the FAA's failure to promulgate as formal regulations basic enforcement policies that affect civil rights of airmen, resulting in many serious violations of the Administrative Procedure Act.[9]

Several salient facts underscore the legitimacy of the issues raised. Since 1926, the seminal year for federal regulation of aviation,[10] 50,000 American citizens have had their pilot, navigator, flight engineer or mechanic licenses suspended or revoked for the sole purpose of punishing them for violating an air-safety regulation.[11] Never has the policy of using such penalties, or imposing them through an administrative rather than a judicial system, been debated in Congress or committee. There is not now, nor has there ever been, any statute that authorizes their use. There is no regulation that does so, nor has there been for forty-five years, since the sole governing rule[12] was repealed by government aviation officials.[13] Since that event they have avoided instituting rulemaking procedures through which airmen could challenge the system and force public debate.

The FAA's punitive certificate sanction system is entirely the creation of zealous public officials who in 1926 refused to accept the enforcement system that Congress had just enacted. Ever since, they and their successors, by all manner of devices, have shielded that fact from scrutiny.

II. HOW ENFORCEMENT WORKS

A. BACKGROUND

The vast majority of air-safety cases involve pilots, mechanics, air carriers and air-taxi operators who are charged with violations of air-traffic, record-keeping, maintenance and operations regulations. These are prosecuted by either a certificate action pursuant to the claimed authority of section 609 of the Federal Aviation Act,[14] where punishment is by suspension or revocation of a given certificate (license), or by a civil penalty action under section 901 of that Act,[15] which may lead to payment of a money fine by compromise or judicial action.

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[1] FEDERAL AVIATION ADMINISTRATION, CHIEF COUNSEL'S OFFICE ENFORCEMENT REPORT (1979) [hereinafter cited as ENFORCEMENT REPORT].

[2] *Id.* at 1, 6.

[3] *Id.*

[4] *Id.* at 10.

[5] *Id.* at 3, 8.

[6] *See* FEDERAL AVIATION ADMINISTRATION, SURVEY OF THE ENFORCEMENT PROGRAM, 1971, at app. B (1972) (internal FAA General Counsel document) ("The number of repeat violators are small, probably less than one percent . . . .").

[7] Contained in the Federal Aviation Regulations (FARs), 14 C.F.R. §§ 1.1-199.31 (1984), and promulgated pursuant to the Federal Aviation Act of 1958, 49 U.S.C. app. §§ 1301-1552 (1982) [hereinafter cited as F.A. Act of 1958 or 1958 Act].

[8] *See* Handbook for Handling Legal Aspects of FAA Enforcement Program, FAA Order 2150.2, ¶ 12.b, at 13 (1968) [hereinafter cited as 1968 Handbook]. This was superceded in 1980, as part of a consolidation of all enforcement handbooks, by 1980 Handbook, *infra* note 17.

[9] 5 U.S.C. §§ 551-576 (1982).

[10] See *infra* text accompanying notes 53-56.

[11] Author estimate based mainly on sampling count of FAA enforcement docket index cards, and other sources.

[12] Department of Commerce, Air Commerce Regulations § 74(a), (f) (1926) ("Pilots' and mechanics' licenses will be suspended or revoked for (A) Violating any provision of the air commerce act of 1926 or these regulations . . . . (F) Violating air traffic rules.") [hereinafter cited as 1926 Rule].

[13] For discussion of how and when this rule was eliminated, see *infra* text accompanying notes 138-44.

These two avenues for air-safety enforcement should be distinguished from qualifications actions by the FAA. For example, if an airman applies for a particular type of certificate (pursuant to section 602 of the Federal Aviation Act), and is then denied its issuance on grounds he does not meet "pertinent rules, regulations, or standards," he may appeal that denial to the National Transportation Safety Board (NTSB), which may overrule the FAA and direct that the certificate be issued.[16] After having been issued a certificate, developments may occur which indicate that the holder no longer meets the qualifications set down for it. For instance a pilot may land short and wreck his aircraft, or the FAA may learn that he has a medical problem that he didn't report. He may be asked to take a flight test, or undergo a medical exam by specialists. Should he refuse, the agency will institute an action under section 609 (also appealable to the NTSB) to suspend the certificate or rating in question until he does so, and passes.[17] Should he flunk, the FAA will revoke.[18] These qualifications matters account for only a small minority of section 609 cases appealed to the NTSB.[19] Rather than risk delay, expense and an adverse decision (basically, only the reasonableness of the FAA request can be contested), it is usually far more practical for the airman to take the flight test or exam promptly and resolve the matter.

These cases highlight a key point—section 609 is used for two distinct and mutually exclusive purposes—a dichotomy which cannot be discerned from any language in the section itself. One branch involves cases that charge a violation of a safety regulation, the other a failure to satisfy license qualifications.[20] The statute clearly speaks to the latter, but says nothing of the former.[21]

Since certificate sanctions will literally shut down the operation, put people out of work, and disrupt service to the public, they are normally not used against a business entity like an airline, air-taxi operator, or repair shop. Rather, FAA imposes civil penalties which it can be fairly certain will be paid.[22] This is ensured by the cost of legal defense and the need to avoid strained relations with inspectors who may soon return to the certificate holder's shop. The ratio of certificate to civil penalty actions in airline cases, most of which originate with their pilots or mechanics, is about 20/80.[23] In general aviation, this trend is reversed, 67/33, while the overall ratio is 60/40.[24] It is likely because of FAA sensitivity to the great salary loss occasioned by a suspension that airline captains pay a far higher ratio of civil penalties than the commuter pilot or private pilot. Civil penalties for private pilots generally run between $100 and $200; for commercial pilots, $200-$300; and for airline pilots, $300-$1,000.[25] A civil-money fine is, of course, almost always a far less drastic solution to a violation case than a certificate action.

Violation cases are investigated at the local level, then screened at regional headquarters and turned over to regional counsel for prosecution. An enforcement handbook provides overall guidance.[26] Most violations, FAA concedes, are inadvertent[27] and 99% of them are first offenses.[28] If it is minor and a first offense, the inspector may take administrative action by a warning letter.[29]

B. *The Basic Problem*

The key problem with FAA enforcement is that it consists of two unrelated systems, or tracks, of justice, either of which may be invoked by FAA officials in prosecuting a given offense: 1) Section 901 civil money penalty actions; 2) Section 609 punitive certificate actions. Subject only to handbook guidelines, rather than any statute or regulation, FAA regional counsel can initiate a given violation case on whichever track he chooses.[30] In one case, the certificate track may be used and the action initiated with a form letter called a Notice of Proposed Certificate Action.[31] It would propose, for example, to suspend the pilot's license for a period of up to one year (the FAA has no fixed penalties), usually in increments of 30, 60, 90 days, and so forth. In another case, which might involve an identical violation, the agency may well impose a civil penalty. This, too, would be initiated by a form letter, informing the accused that the FAA will accept so many dollars in compromise.[32] Regardless of which form letter is used, the allegations of the acts complained of and regulations violated will remain the same.

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[14] 49 U S C app § 1429(a) (1982)

[15] 49 U S C app § 1471(a)(1) (1982). For other discussions of FAA enforcement which mention other safety duties, *see generally* Kovarik, *Procedures Before the Federal Aviation Administration*, 42 J. Air L. & Com. 11 (1976); Hamilton, *Administrative Practice Before the NTSB Problems, Trends and Developments*, 46 J. Air L. & Com. 615 (1981), Pangia, *Handling FAA Enforcement Proceedings A View From the Inside*, 46 J. Air L. & Com. 573 (1981) None of these articles address the issues raised here

[16] 49 U S C app § 1422(b) (1982)

[17] *See* Compliance and Enforcement Program, FAA Order 2150 3, ¶ 203 c(1)(c), at 13 (1980) [hereinafter cited as 1980 Handbook]

[18] *Id*

[19] The NTSB docket staff has advised the author that the Board receives 700 administrative appeals a year from the FAA (all numbers approximate) 200 are appeals from a denial of an application for a certificate under section 602, 500 are appeals from section 609 actions Of these 500, 10 cases will involve an airman who refuses to be reexamined for skill purposes, or no more than 2% of section 609 cases, 15 cases, or 3%, involve medical certificates already issued, but a new disability is discovered, the balance, or 475, will be strictly to impose a suspension or revocation as punishment for the violation of a safety rule

[20] *See* 1980 Handbook, *supra* note 17, ¶ 203 c(1)(b)(c), at 13

[21] *See infra* text accompanying notes 47-57

[22] *See* 1968 Handbook, *supra* note 8, ¶ 12 b, at 13

[23] Enforcement Report, *supra* note 1, at 4

[24] *Id*

[25] *See* Office of Chief Counsel, Federal Aviation Administration, Briefing Book for Testimony Before Anderson Aviation Subcommittee, H R 7488, July 1 & 2, 1980 [hereinafter cited as Briefing Book]

[26] *See* 1980 Handbook, *supra* note 17

[27] *See* 1968 Handbook, *supra* note 8

[28] *See supra* note 6

[29] 14 C F R § 13 11 (1984)

On the civil penalty track, should the pilot ignore the letter and take the initiative and wish to contest the matter, the FAA must turn the case over to a United States Attorney for action in the United States District Court.[33] There the airman (or government) may "demand trial by jury of any issue of fact."[34] Should he lose and the judge impose a fine, the maximum is $1,000 per violation.[35]

On the certificate track, should the accused ignore the notice, the FAA will issue an order in the name of the Administrator that commands the suspension or revocation of his license.[36] The limit on either is one year.[37] On this track, the burden falls on the airman to appeal to the NTSB, during which appeal, absent an FAA declaration of emergency; the order is stayed.[38] There he will have a trial de novo before an administrative law judge (ALJ).[39] Either side may appeal the ALJ's decision to the full board, which acts in a similar capacity to a court of appeals; from there only the airman may appeal to a United States court of appeals.[40]

Should the NTSB find the airman guilty of a violation and deserving of punishment, it will affirm the FAA order, or modify it by reducing the term

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[30] *See* 1980 Handbook, *supra* note 17, ¶ 205, at 14

[31] *Id* at ¶ 1203 c, at 168-70, and fig 12-8, at 214-18, *see also* 14 C F R § 13 19(c) (1984)

[32] 1980 Handbook, *supra* note 17, ¶ 1202 b, at 164, and figs 12-1 to 12 5, at 201-09, *see also* 14 C F R § 13 15(b) (1984)

[33] 49 U S C app § 1473 (1982)

[34] 49 U S C app § 1473(a), (b)(1) (1982)

[35] 49 U S C app § 1471(a)(1) (1982)

[36] 1980 Handbook, *supra* note 17, ¶ 1203 e, at 170-71, and fig 12-12, at 220-22, *see also* 14 C F R § 13 19 (1984)

[37] *See* 49 U S C app § 1422(b) (1982)

[38] 49 U S C app § 1429(a) (1982)

[39] *Id*

[40] 49 U S C app §§ 1429(a), 1486 (1982)

of suspension or revocation,[41] but it cannot under any circumstances switch to a money penalty. Likewise, the district court judge cannot switch from a pecuniary fine to a certificate suspension or revocation.[42] The two enforcement systems are wholly independent of one another.

Logically, then, the FAA's position must be that it can operate its enforcement program with two separate yet unequal systems (one administrative, the other judicial), and choose either in its sole discretion. Yet Congress guaranteed airmen the right to jury trial[43] for violation of "any rule, regulation, or order."[44] Section 901 also states that airmen "shall be" subject to a civil money penalty.[45] It is improbable that Congress would authorize an executive branch official to deny licensees their statutory privileges by the simple expedient of sending out a form letter that puts the case on the certificate-administrative law track.

To underscore the contradictions of logic and common sense the two-track enforcement program engenders, consider, for example, the pilot against whom FAA has proposed a sixty-day suspension. Suppose he is an airline captain, who then asks FAA regional counsel if he can pay a civil penalty instead, because the suspension will cost him, at $90,000 per year, $15,000. Assume also that he is sincere, has no prior record, and has just accomplished a good checkride. The FAA lawyer can relent and agree to accept a certified check for $500, simultaneously drop the certificate case, and close out the file with a civil penalty letter of receipt.[46]

In the letter of receipt he prepares, the FAA official will flip-flop from citing section 609 as authority for the legal action to section 901, which carries with it a right to jury trial. But this procedure precludes any chance for the airman to ever demand that right! And, as we have just seen, this same lawyer could have started the case off, in the first instance, on the civil penalty track. In short, by claiming it can operate the two tracks in parallel and choose between them at will, FAA takes away the airman's right to jury trial.

III. ENFORCEMENT PERSPECTIVE

The core issue is whether Congress has ever authorized a system of administrative enforcement to decide issues of guilt or innocence, with certificate suspension or revocation as the penalty. If Congress has not so authorized the FAA, how have federal officials been able to continue operating in such a manner for more than half a century?

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[41] 49 U S C app § 1429 (1982)

[42] *See* 49 U S C app §§ 1471, 1473 (1982)

[43] 49 U S C app § 1473(a), (b)(1) (1982)

[44] 49 U S C app § 1471(a)(1) (1982)

[45] *Id*

[46] *See* 1980 Handbook, *supra* note 17, ¶ 1202 d, at 165, and fig 12 16, at 210, *see also* 14 C F R § 13 15(o) (1984)

A. THE ACT AND LEGISLATIVE HISTORY

In looking at FAA enforcement history, the stark contrast in statutory language between sections 901 and 609 is apparent. Section 901 of the Act is written in clear, precise and unequivocal terms:

> Any person who violates . . . any provision of . . . [this Act], or any rule, regulation, or order issued thereunder . . . shall be subject to a civil penalty of not to exceed $1,000 for each such violation . . . .[47]
> Any civil penalty may be compromised by the [Administrator] . . . .[48]
>
> . . . . .
>
> The trial of any offense under this [Act] shall be in the district in which such offense is committed . . . .[49]

This language is exclusive; nowhere does it even hint of a parallel or alternative enforcement system with a different penalty.

In contrast, section 609 provides in pertinent part:

> The [Administrator] may, from time to time, reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the [Administrator], he determines that safety in air commerce or air transportation and the public interest requires, the [Administrator] may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate . . . airman certificate . . . .[50]

The provision contains no language concerning offenses, regulations, violations, sanctions or penalties; this section has remained unchanged in this regard since 1938,[51] and section 901 has been essentially the same since 1926.[52] Yet the FAA claims that the punitive certificate sanction system is authorized by the vague language in section 609, "[if the Administrator] determines that safety in air commerce or air transportation and the public interest requires."

In order to resolve the issue of the extent of legislative authorization, one must examine Congressional activity in the seminal year of 1926. On May 20, 1926, the same day that it enacted the Air Commerce Act,[53] Congress adopted an official history of that legislation, which proclaimed:

> The enforcement of the provisions of the Air Commerce Act of 1926 and regulations thereunder is for the most part by means of a system of civil administrative penalties similar to those by which the customs and navigation laws have always been enforced. A flat penalty prescribed by the statute is imposed by subordinate Federal administrative officers for the violation. The offender then has the right of appeal to the proper Secretary [Commerce, War and Post Office]—the Secretary of Commerce, for instance, in the case of air traffic rules. The Secretary may mitigate or remit the penalty so as to fit the offense, and his action is final. The penalty as thus finally determined may be collected by proceedings in personam against the person subject to the penalty . . . . These proceedings will conform as nearly as may be to civil proceedings in admiralty, save that trial by jury may be had . . . .[54]

In providing for federal regulation of aviation, Congress wisely gave careful consideration to the kind of enforcement system needed to back up those regulations. It looked at alternatives: the House approved a bill that provided for "[a] criminal penalty of a fine not exceeding $500 or imprisonment not exceeding 90 days."[55] "The Senate bill provided for the enforcement of the provisions of the act and regulations thereunder through a system of flat civil penalties . . . ."[56] In conference committee the Senate scheme prevailed.

The 1926 history reflects that Congress never considered using suspensions or revocations as a form of punishment for rules violations (much less trying them by administrative justice). In creating its enforcement system, Congress asked and answered at least six basic questions: 1) Who would be prosecutor? (United States attorney); 2) How would the case be initiated? (like a civil case in admiralty); 3) In what court? (United States district court); 4) In what venue? (district where offense committed); 5) Right to jury? (yes); 6) What kind of penalty? (money fine).

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[47] 49 U.S.C. app. § 1471(a)(1) (1982).

[48] 49 U.S.C. app. § 1471(a)(2) (1982).

[49] 49 U.S.C. app. § 1473(a) (1982). *See also id.* § 1473(b)(1), which provides:

> Any civil penalty imposed or assessed under this chapter may be collected by proceedings in personam against the person subject to the penalty . . . . Such proceedings shall conform as near as may be to civil suits in admiralty, except that either party may demand trial by jury of any issue of fact, if the value in controversy exceeds $20, and the facts so tried shall not be reexamined other than in accordance with the rules of the common law.

[50] 49 U.S.C. app. § 1429(a) (1982) (original version at Federal Aviation Act of 1958, Pub. L. No. 85-726, § 609, 72 Stat. 732, 779-80).

[51] Civil Aeronautics Act of 1938, ch. 601, § 609, 52 Stat. 973, 1011 (repealed 1958).

[52] Air Commerce Act of 1926, ch. 344, § 11(b), 44 Stat. 568, 574.

[53] *Id.*

[54] CIVIL AERONAUTICS, LEGISLATIVE HISTORY OF THE AIR COMMERCE ACT OF 1926, at 59 (1928) [hereinafter cited as 1926 History].

[55] *Id.* at 45. Also relevant is a comparison of the provisions of the Air Commerce Act of 1926 as passed by the Senate and as passed by the House (S. 41, 69th Cong., as passed by the Senate December 16, 1925, and S. 41, 69th Cong., as passed by the House of Representatives April 12, 1926). The House amendment was in the nature of a substitute for the Senate provisions and struck out all after the enacting clause of the Senate bill. *Id.* at 9.

The criminal penalties were set forth in section 13(a) of the House version of S. 41. *Id.* at 20. Section 13(d) of that version provided that the states as well as the United States may prosecute the offenses prescribed by the act or regulations thereunder, and may also prescribe penalties or forfeitures, civil or criminal, to be imposed for such offenses in lieu of the federal penalties under subdivision (a). *Id.* at 47.

[56] *Id.* at 51.

It is indisputable that the sole enforcement system provided by Congress in 1926 was civil money penalties with right to jury trial in regular federal courts. The salient question then becomes: Did Congress thereafter authorize use of a punitive certificate sanction as an additional or alternative method of punishment, and the substitution, in the sole discretion of an official of the executive branch, of a one-man administrative hearing for the right to trial by jury? The FAA lawyers' position has always been that the Civil Aeronautics Act of 1938 established the punitive suspension/revocation system. Yet close scrutiny of regulatory and legislative history reveals that this is manifestly not the case.[57]

B CASES CHALLENGING THE PUNITIVE CERTIFICATE SANCTION AUTHORITY

The use of punitive certificate sanctions has been directly challenged in three reported cases. Remarkably, each holding in these cases is premised on the misconception that punitive suspensions and revocations began in 1938 with the enactment of the Civil Aeronautics Act. Yet, the first rulebook in 1926 told pilots and mechanics their certificates would be suspended or revoked for "[v]iolating any provision of the Air Commerce Act of 1926 or these regulations [or for] violating air traffic rules."[58] Thus, the court in *Wilson v. Civil Aeronautics Board*[59] misconstrued the question by phrasing the key issue as: "Whether, in circumstances in which the Civil Aeronautics Board does not find the pilot to be unqualified to fly, the Board is empowered under section 609 of the Civil Aeronautics Act [of 1938] to suspend his airman certificate as a deterrent sanction."[60]

Similarly, the court in *Hard v. Civil Aeronautics Board*[61] was quite definite in expressing it's belief that the system started with the Act of 1938. The court held: "A protocol statement, part of the Congressional declaration of policy in section 2 of the Civil Aeronautics Act of 1938 is the main prop for Board action under section 609 of the Act . . . ."[62] Finally, *Pangburn v. Civil Aeronautics Board*[63] held:

> Under the provisions of the 1938 Act suspensions were frequently im-

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[57] *See* 1926 Rule, *supra* note 12, *see also* Brief for Respondent at 21, Wilson v. CAB, 244 F.2d 773 (D.C. Cir.), *cert. denied*, 355 U.S. 870 (1957).

[58] *See* 1926 Rule, *supra* note 12.

[59] 244 F.2d 773 (D.C. Cir.), *cert. denied*, 355 U.S. 870 (1957). The briefs in this case may be found at Vol. 1163, *Records and Briefs, United States Court of Appeals, D.C.*, of the D.C. Bar Association.

[60] 244 F.2d at 773-74.

[61] 248 F.2d 761 (7th Cir.), *cert. denied*, 355 U.S. 960 (1957).

[62] 248 F.2d at 761-62. Section 2 instructed the Civil Aeronautics Authority (later CAB) that it should consider "as being in the public interest . . . the regulation of air transportation in such manner as to . . . assure the highest degree of safety . . . ."

[63] 311 F.2d 349 (1st Cir. 1962).

> posed as a deterrent sanction notwithstanding the apparent technical qualifications of the pilot. The imposition of a suspension as a sanction was challenged under the 1938 Act in *Wilson v. Civil Aeronautics Board* . . . . Relying on the consistent administrative practice of over 4,000 such suspensions during the course of administering the [1938] Act . . . the [*Wilson*] court held that the administrative practice should be sustained . . . ."[64]

In these cases, the courts' focus was on the 1938 Act; the decisions make no mention of the more relevant 1926 Act. Both the courts and the challengers were unaware both that the Civil Aeronautics Board (CAB) and earlier government aviation officials actually relied on the 1926 Act as their legislative authority for the suspension system[65] and of the existence of the 1926 Rule. The challengers' basic argument was that section 609, because it said nothing about violations, offenses, regulations or sanctions, could not possibly have been meant to authorize punitive suspensions.[66] The CAB took advantage of the focus on the 1938 Act, although in their brief in *Wilson* they had acknowledged that the system started earlier[67] and that the 1938 legislation was not determinative.[68]

The decisions in *Wilson*, *Hard* and *Pangburn* rest upon a false premise; this is fundamental to understanding how the punitive certificate sanction system has survived attack. Since the system actually started in 1926 and the government really claimed Congress had authorized it in that year, the only possible relevancy that the 1938 Act could have had was if it modified or clarified the system in some manner, which the government impliedly conceded it did not. Despite their knowledge that the 1938 Act has no relevance to the origins of the punitive certificate sanction system, FAA officials continue to defend section 609 actions by citing *Wilson*, *Hard* and *Pangburn*.[69] Ironically, while they continue to do this, the Agency's own official history relates:

> The familiarization period over, the Aeronautics Branch began meting out other forms of punishment in addition to reprimands—fines, suspensions and revocation. . . . 22 percent had their licenses suspended. The usual fine was $25.
>
> When Young succeeded MacCracken as Assistant Secretary [of Commerce] in October 1929, the Branch gradually began to deal more severely with violators. . . . the Aeronautics branch turned to suspensions as a primary enforcement tool. At the same time revocations were being handed out

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[64] *Id.* at 354; *see also* Specht v. CAB, 254 F.2d 905 (8th Cir. 1958).

[65] *See* Brief for Respondent at 8, 17 n.14, 20, 21, 22, 27, *Wilson*.

[66] *See* Brief for petitioner at 13-16 and Reply Brief for Petitioner at 1-11, *Wilson*.

[67] See Brief for Respondent at 21, *Wilson*.

[68] *See infra* notes 98 and 99 and accompanying text.

[69] *See infra* note 73 and accompanying text. *See also* Barnum v. National Transp. Safety Bd., 595 F.2d 859 (D.C. Cir. 1979); Haines v. Department of Transp., 449 F.2d 1073 (D.C. Cir. 1971); Walker v. CAB, 251 F.2d 954 (2nd Cir. 1958).

with greater frequency . . . .[70]

We can see from this history and the existence of the 1926 Rule on the subject that CAB lawyers deliberately led the court in *Wilson* to believe 1938 to be the key year,[71] then cited that case as authority in *Hard*, which came down later the same year.[72] By the time of *Pangburn* in 1962, FAA officials merely needed to cite *Wilson* for authority in order to sustain their certificate actions. This same approach was repeated as late as 1977 in *McGee v. Secretary of Transportation*,[73] the latest challenge to section 609. Nothing in these case decisions or in the public record indicates that FAA officials have ever made any effort to correct this judicial misunderstanding about the 1938 Act. Such government agency failure to correct a gross error upon which the rights of so many citizens depend is an unconscionable breach of public duty. The evidence is compelling that this conduct has been a part of a deliberate effort to cover up the lack of legislative authority for the punitive suspension system.[74] FAA lawyers know full well that the only enforcement system Congress authorized in 1926 was the civil money fine with right to jury.[75]

This history explains why no request to Congress has been made by any government agency for authorization of punitive certificate sanction power and why committee hearings, which would have allowed public input into this major policy, have never been held. It explains why FAA officials, in particular, have never asked Congress to amend section 609 so that it plainly authorizes the current system. Such public action would risk exposing the inconsistencies and paradoxes of the FAA's two-track enforcement program, including the following:

1) Congress, after careful consideration in 1926, clearly stated that in the case of a rules violation, pilots and mechanics had the right to pay a money fine and "demand" a jury trial. Congress has never rescinded that right, yet executive branch officials now deny this right by the simple expedient of sending out a form letter. Neither the FAA nor the courts have ever focused on this blatant inconsistency.

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[70] N KOMONS, BONFIRES TO BEACONS, FEDERAL CIVIL AVIATION POLICY UNDER THE AIR COMMERCE ACT 1926-1938, at 107-08 (1978).

[71] *See infra* notes 93 and 94 and accompanying text

[72] *See* 248 F 2d at 764

[73] No 76-1092 (D C Cir 1977) *See* Brief for Respondent, the briefs in this case may be found at Vol 2910, *Records and Briefs, United States Court of Appeals, D C* , of the D C Bar Association

[74] *See infra* sec VI for details and discussion of this coverup

[75] It has been my experience that if you ask an FAA or NTSB lawyer what year Congress authorized punitive certificate sanctions, he will answer 1938, and cite the *Wilson*, *Hard* and *Pangburn* cases, he will also agree that the only enforcement system Congress authorized in 1926 was the civil money penalty with right to jury trial

2) Suspension and revocation of any license has always been seen as a harsh form of punishment reserved for flagrant offenses (money fines are the norm). On what basis would Congress, leaving no legislative history to support such a drastic measure, single out aviation and approve this extraordinary use of certificate sanctions rather than money fines?

3) Congress specifically focused in 1926 on the issue of penalties, and ultimately set a limit of $500 per violation ($1,000 after 1938). There is no indication in the 1938 Act that Congress was dissatisfied with this basic system—that Congress increased the maximum fine in 1938 shows that it considered the question of penalties and determined that an increased ceiling, *not* a suspension system, was appropriate. License suspension is totally inconsistent with this increased ceiling, since it often means the loss of thousands of dollars in wages and possibly even the pilot or mechanic's job.

4) Why would Congress authorize a two-track enforcement program that prohibits an ALJ from switching from an extreme form of penalty, suspension or revocation, to the customary money fine, then turn around and give that purely discretionary power to an executive branch lawyer? No such intent is expressed in any of the statutes.

Once one understands that these paradoxes accurately reflect the state of the FAA's two-track program, it can be seen that any agency claim that Congress has ever authorized punitive administrative certificate sanctions is illogical and fails upon careful scrutiny of the public record. In light of these shortcomings in the government's position, it is alarming that this program has been able to endure without being successfully challenged.

IV. THE HEART OF THE CONUNDRUM—THE *WILSON* CASE

It took thirty years after 1926 before anyone mounted a serious legal challenge to punitive certificate sanctions. This time lag was probably due to the cost of litigation, the small size of the aviation community in the 1920's, the Great Depression, World War II, and the past unwillingness of most citizens to believe that their government could be less than honest. That challenge had to await the growth and financial muscle of the Air Line Pilots Association (ALPA) in the 1950's. ALPA launched its first attack in *Wilson v. Civil Aeronautics Board*[76] in 1957; *Hard v. Civil Aeronautics Board*[77] was decided in that same year. *Pangburn v. CAB*[78] followed in 1962. After a long hiatus, ALPA tried again in 1977 with *McGee v. Secretary of Transportation.*[79] In each case the unsuccessful challenger was an airline captain.

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[76] 244 F 2d 773 *see supra* text accompanying notes 59 60

[77] 248 F 2d 761 *see supra* text accompanying notes 61-62

The *Wilson* case became the touchstone for the other rulings. Captain Wilson's lawyers based their challenge on section 609 of the Civil Aeronautics Act of 1938.[80] The reasons they did so and the arguments they used are obvious: the section says nothing of violations, regulations, offenses or punishment. Since Congress so precisely described these procedures in section 901,[81] the lawyers reasoned, why would Congress sanction a new system without plainly saying so? Why would the lawmakers intermingle such a new system and unrelated qualifications matters like "reinspection" and "reexamination"? Why would section 609 include only one animate object in a long list of inanimate objects? (How do you punish a propeller?) Wilson's lawyers made many of these arguments and more.[82]

CAB argued that it needed the punitive suspension power for "discipline" and "deterrence."[83] Its lawyers argued, and the court so held, that "[b]y resting suspension on a Board determination that 'the interest of the public so requires,' Congress conferred broad discretionary authority upon the Board."[84] Offering no rationale in its one-page decision, the court brushed aside any argument that Congress intended section 901 to be the exclusive mechanism for punishing violators.[85] As the 1926 legislative history reflects, this is precisely what Congress did in fact intend,

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[78] 311 F 2d 349; *see supra* text accompanying notes 63-64.

[79] No 76-1092 (D.C. Cir. 1977).

[80] 49 U.S.C. app § 1429(a) (1982). The 1938 version read, in part:

> The Authority [CAA Administrator] may, from time to time, reinspect any aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, may reexamine any airman, and after investigation, and upon notice and hearing, may alter, amend, modify, or [the Board may] suspend, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if the interest of the public so requires, or [the Board] may revoke, in whole or in part, any such certificate for any cause which, at the time of revocation, would justify the Authority [Administrator] in refusing to issue the holder of such certificate a like certificate.

Civil Aeronautics Act of 1938, ch. 601, § 609, 52 Stat. 973, 1011.

[81] 49 U.S.C. § 1471(a)(2) (1982). This point would have been made more clear had Wilson's lawyers argued the premier maxim of statutory interpretation, *expressio unius est exclusio alterius*.

[82] *See* Brief for Petitioner, *Wilson*. *See also* Brown v. CAA, 112 F 2d 737 (9th Cir. 1940), *reh'g dismissed as moot*, 119 F 2d 172 (9th Cir. 1941) ("If the suspension [imposed under section 609] was purely punitive the application [for supersedeas] might be granted but the order also requires that . . . the petitioner should take [a] proposed examination before his right to fly is restored."). The court thereby hints it might have found that section 609 did not authorize punitive suspensions, had time not rendered the case moot.

[83] *Id.* at 11-19.

[84] 244 F 2d at 774.

[85] *Id.*

one system (civil) to the exclusion of another (criminal).[86] The basic reason for any system of law enforcement is to provide discipline and deterrence; just how that will be accomplished, and whether it is sufficient for the task, is a legislative decision for Congress, not the courts. Congress clearly chose a particular system in 1926 and did not alter it in 1938. The *Wilson* court's reliance on the "public interest" clause of section 609 placed undue emphasis on that section without examining the entire legislative scheme.

The suggestion by the *Wilson* court that the phrase "if the interest of the public so requires" was intended as a comprehensive grant of power to start a new enforcement system is untenable. The phrase "public interest" is a *condition subsequent* to first reinspecting, reexamining or investigating to determine if the airman, appliance or propeller continues to meet regulatory standards. So long as it was deemed to be "in the public interest," only then could a decision be made to amend, modify, suspend or revoke in order to correct any deficiency. That phrase was clearly intended to be a limitation of the Board's discretion rather than a grant of power to take action.

The appellate court in *Wilson* simply refused to upset a longstanding enforcement system and used the "public interest" clause as a legal handle on which to base its ruling. "This consistent and, until now, unchallenged administrative practice," the *Wilson* court said, "will not be overturned except for very cogent reasons . . . ."[87] Concerned it might harm air-safety if it did so, the court held: "The most cogent of reasons—air safety—supports the administrative practice here under attack."[88] *Hard*, *Pangburn*, and *McGee* all struck the same note. These courts were really making a legislative, rather than a judicial determination—we think it is a good idea that you have this power.

The empty logic of the "public interest" argument has been recently exposed. In *Jensen v. Administrator of Federal Aviation Administration*,[89] the court ruled that the FAA had, in violation of the Alcoholism Act, improperly denied a medical certificate to Jensen, a commercial pilot, who had admitted to a prior history of alcoholism. FAA argued that its "two-tier" procedure (regular application, and if denied, request for exemption), which leaves the matter strictly within the discretion of agency personnel, negated any contention that Jensen was being denied his medical certificate solely on ground of prior alcoholism in violation of the Alcoholism Act. Finding that argument "without merit," the court explained:

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[86] *See* 1926 History, *supra* note 54.

[87] 244 F 2d at 774. *Contra* Global Van Lines v. ICC, 714 F 2d 1290, 1295-96 (5th Cir. 1983) ("A general congressional exhortation to go forth and do good, without more, is not a proper foundation for the sound development of administrative law.").

[88] *Id.* *See also* Nadiak v. CAB, 305 F 2d 588, 595 (1962) ("The public—including judges who fly—has a vital interest in air safety.").

[89] 641 F 2d 797 (9th Cir. 1981), *vacated*, 680 F 2d 593 (9th Cir. 1982).

> [E]ven if this court accepted the FAA's "two tier" argument, the exemption procedure does not comport with due process. . . .
>
> Due process requires that for a meaningful review of an agency decision, the agency must have articulated standards governing its determination.
>
> Here, the FAA's only standards for an exemption are that it would be "in the public interest" and "would not adversely affect safety." These standards do not give the court a sufficient basis for review. Neither do they give the applicant any basis for planning his course of action (including the seeking of judicial review).[90]

Jensen pulls the rationale right out from under *Wilson*. Since "public interest" and "safety" do not comport with due process standards, they can hardly provide the foundation for an entire system of enforcement.

By directly attacking section 609 in *Wilson*, the ALPA lawyers failed to seize upon the real issue in the case—when did Congress, having in 1926 designed an enforcement scheme which provided for civil money penalties and a jury trial, thereafter add punitive certificate sanctions and an administrative hearing? The paradox of *Wilson* is apparent: legislative history aside, the key phrase "public interest," on which the court pinned its decision, did not exist in 1926,[91] so it could not have created the system! Had the court recognized that Commerce officials initiated the certificate system in 1926, then CAB's defense of it would necessarily have been forced into that time frame, and the government would have been compelled to admit the internal inconsistency of their program.

Yet astonishingly, the CAB did inform the *Wilson* court—in a roundabout fashion—that punitive suspensions started in 1926, not 1938. It is clear that this acknowledgement evaded the grasp of the court and Wilson's lawyers. The latter made no mention of it in their reply brief[92] and neither the *Wilson* decision nor subsequent cases have recognized this fact. How did such an oversight occur?

The answer is that the CAB lawyers apparently overwhelmed the court and opposing counsel with a series of clever, and often specious, arguments which they loaded with statements about "public interest" and "air safety." They made it seem that they were arguing that Congress authorized certificate sanctions in 1938, but never directly said so. "The situation is simply the familiar one in which more than one sanction is provided for a particular offense, a point made clear, we think, by the

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[90] *Id.* at 799 (citations omitted).

[91] *See* Air Commerce Act of 1926 § 3(f), 44 Stat. 568, 570; *see also* Brief for Respondent at 20-21, *Wilson* ("the safety regulatory provisions of the Civil Aeronautics Act were in substitution for, and largely an extension of, the provisions of the Air Commerce Act of 1926 . . . .")

[92] *See* Reply Brief for Petitioner, *Wilson*.

[1938] legislative history."[93] "In our view, the [1938] legislative history removes any possible doubts as to the Board's power to suspend for violations."[94] Yet they cited no language from any such history to support either of these assertions.

They argued that "suspensions and civil penalties were viewed and administered at least as alternate sanctions by the Secretary [of Commerce—after 1926], a fact duly reported to the Congress."[95] This statement was true, but also cleverly misleading because it begged the question whether Congress in 1926 in fact authorized *two* forms of penalty, as well as *two* separate systems of justice? The CAB lawyers knew it had not.

To counter the basic argument that section 609 says nothing of violations, offenses, regulations or sanctions, the CAB attorneys bluffed their way through: "Petitioner's contentions that Congress meant less than it said in section 609 are not persuasive."[96] In another part of the brief they wrote: "The absence of any express provision that suspension might be imposed for violation was not to limit the Board's powers, but to broaden them."[97] This statement was nonsense. They were contending that because Congress had said *nothing* about violations in 609, that meant it had in fact authorized their punitive system. At the same moment that they were conceding that Congress had said nothing, they were criticizing Captain Wilson's arguments on grounds that Congress had said a lot.

Perhaps to make it seem as if they were being forthright, elsewhere they said: "The purpose of the Congress plainly was to continue the familiar pattern of safety regulation established by the Air Commerce Act . . . ."[98] And "there appears to have been no direct reference to the suspensions provisions in the [1938] Congressional debates."[99] It should by now be easy to understand why not.

While certainly some might see these arguments as coming within the bounds of legitimate advocacy, the CAB's brief in *Wilson* (and *Hard*; and *Pangburn*, where FAA lawyers were on the brief) is a major facet of government aviation officials' efforts to cover up their lack of authority for punitive suspensions.[100] As the index to their brief reflects,[101] in not a single instance did they cite any legislative history for the Air Commerce Act of 1926. Yet careful analysis reveals they were contending that section 3(f) of that Act was their authority for certificate penalties, not the 1938 Act. As stated in the government's brief, section 3(f) was a bare statement that:

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[93] Brief for Respondent at 8, *Wilson*.

[94] *Id.* at 27.

[95] *Id.* at 22.

[96] *Id.* at 12.

[97] *Id.* at 27.

[98] *Id.*

[99] *Id.* at 26.

[100] *See infra* sec. VI for details and discussion of this coverup.

[101] *See* Brief for Respondent at iii-ix, *Wilson*.

> The Secretary of Commerce shall by regulation . . . [p]rovide for the issuance and expiration, and for the suspension and revocation, of registration, aircraft, and airman certificates, and such other certificates as the Secretary of Commerce deems necessary in administering the functions vested in him under this Act.[102]

Nothing in this section (which links animate and inanimate objects with issuance and suspension in a single sentence) suggests authorization for a penalty system, only qualifications matters. A careful reading of the government's brief reveals that the CAB lawyers asserted that they could institute a punitive certificate sanction system because Congress had not forbidden it in section 3(f).[103] Such legislative interpretation has no basis in logic, especially when Congress did speak directly to the subject of enforcement.

As can be seen by comparing the Acts of 1926 and 1938, section 3(f) was the precursor of sections 602 (issuance of certificates) and 609 (suspension and revocation of certificates). In order to clarify section 609's application to qualifications matters, Congress added the terms "reinspection" (for aircraft, propellers, and appliances) and "reexamination" (for airmen). Although the legislative history does not reveal who prompted such a change, it is reasonable to assume that government officials played a major role.

If section 3(f) was these officials' original source of punitive suspension power, why did they not urge that section 609 also be constructed to plainly state that certificates could be suspended or revoked as punishment or sanction for the violati [illegible] afety rule? *Wilson* and *Hard* were decided a full year before the Federal Aviation Agency was created. Section 609 in the Federal Aviation Act of 1958, while retaining the same basic structure as the 1938 Act,[104] was substantially revised to reflect the great shift of power from the CAB to the new agency. How, then, could CAB and CAA officials (the latter, soon to become FAA) fail to urge that section 609 be appropriately amended to clearly support the purported authority that they had claimed existed in *Wilson*? Why has there been no amendment to clarify this anomaly for the past quarter-century? (Nothing found in the public record reveals any such attempt.) The answer is obvious—any public airing of the matter would risk raising tough questions, such as: When did any agency request this punitive certificate power? When did Congress hold hearings to provide for public input?

It did not happen in 1958. The late Senator Mike Monroney, father of the 1958 Act, clearly did not share the agency's view of section 609 and was not aware that it was being used to justify punitive suspensions. In his report on the Act, he said:

> The right of an airman to appeal to the Board the Administrator's denial or nonrenewal of a certificate is retained and strengthened [under section 602], while a party whose right to his current certificate or rating is questioned [under section 609] *as a result of the Administrator's reinspection* is entitled to a hearing and to an appeal to the courts.[105]

Had Senator Monroney been aware that the CAA (to become FAA) was primarily using section 609 for violations, he would not have failed to include violations and sanctions along with reinspection.

Pangburn came down in 1962, when it was clear that *Wilson* and *Hard* were based on a gross misconstruction of the law. Did FAA lawyers seek to correct it? On the contrary, as that decision reflects, they cited *Wilson* for authority. In 1977, they did the same in *McGee*.[106] *Wilson*, *Hard* and *Pangburn* must all fall because the Civil Aeronautics Act of 1938 is not determinative, and punitive certificate sanctions cannot under any circumstances be sustained under the legislation of 1926. The failure of government lawyers to inform these courts of the legislative history of 1926, which shows that Congress carefully chose civil money penalties and that system only, and emphasize that the certificate system started in that year, is inexcusable if not an outright fraud on the courts.

V. CERTIFICATE SANCTIONS

How did those early Commerce officials come to establish the punitive suspension system when its statutory basis was so dubious? Why have their successors maintained it in the face of its many obvious contradictions? Answering the first inquiry is not as speculative as might be expected at this juncture. Those officials violated their mandate from Congress, because they were skeptical about whether civil penalties would be an efficient enforcement tool[107] and were unwilling to wait and go back to Congress to ask for change. Instead, they set up their own unauthorized system of summary justice, a system far more efficient than processing civil penalties through reluctant United States Attorneys with the formalities of federal district court, and the potential burden and expense of jury trial. They could see that civil penalties had severe limitations which Congress should have foreseen. Although over the years it is certain that some government lawyers have recognized that the certificate system has never had any basis in law, they have found it best to rationalize their acts and the program in the name of air safety.

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[102] Air Commerce Act of 1926 § 3(f), 44 Stat. 568, 570.

[103] *See* Brief for Respondent at 21, *Wilson* (referring to section 3(f) of the 1926 Act) ("There was no statutory specification of the grounds for suspension or revocation, this being a matter obviously left for the Secretary to establish."). This statement indicates that the CAB lawyers were arrogating the power to determine when and if an airman could ever exercise his right to "demand" a jury trial in a section 901 civil penalty case.

[104] *See supra* text accompanying notes 50 and 80.

[105] S. REP. NO. 1811, 85th Cong., 2d Sess. 3 (1958) (emphasis added); *see also* H.R. REP. NO. 2360, 85th Cong., 2d Sess., *reprinted in* 195[illegible] . CODE CONG. & AD. NEWS 3741. There is not the slightest suggestion in the House report [illegible] its writers were aware of any connection between safety violations and suspension and revocation of licenses. *Compare id.* at 16 (comments on § 609) *with id.* at 17 (comments on title IX, Penalties) ("This title deals primarily with violations of provisions of the committee amendment which may be punished by the imposition of civil or criminal penalties, or both, and also contains provisions relating to venue and procedure in the case of any such violation. Except as noted below, this title is a reenactment of existing law without substantial change.").

[106] No. 76-1092 (D.C. Cir. 1977).

The 1926 legislative history helps explain the genesis of the problem. One reason that civil rather than criminal penalties, which were proposed by the House,[108] were authorized was that:

> Under the present crowded condition of the Federal Courts criminal proceedings for the enforcement of minor infractions of the air commerce laws would be extremely expensive, add to the present congestion, and in most cases penalties would be long delayed in their collection. The civil administrative penalty is summary and proceedings are noteworthy for their absence of technical rules of evidence and pleading [in the compromise stage].[109]

The House bill's criminal system did address two problems: 1) although it was unlikely that anyone would go to jail, that threat assured prompt payment of any fine; 2) by allowing prosecution in state courts as well as federal,[110] the scheme increased the number of courts available for enforcement action. When the criminal system was not instituted, early aviation officials must have realized that civil penalties lacked sufficient coercive force to ensure payment. It stood to reason that if United States Attorneys were unwilling to prosecute minor criminal air-traffic infractions, they would be no more likely to take small civil penalty cases, or prosecute them vigorously. This would allow a significant number of violators to escape punishment. To address this problem, a *modus vivendi* was worked out in the late 1970's with the Justice Department so that FAA lawyers could bypass the United States attorney "who indicates a general unwillingness to handle the case" and file the complaint directly in district courts themselves.[111]

More importantly, some FAA officials have developed an effective method to assure payment of a civil penalty. Based upon interviews with FAA field inspectors,[112] it is certain that at least one FAA regional headquarters sometimes changes violation cases against professional pilots from the civil penalty recommended by the investigating field inspector to a certificate sanction, out of fear that the airman might be knowledgeable about the weaknesses of the civil penalty system and sit tight, knowing that it is unlikely that the U.S. attorney will vigorously prosecute the case. The same officials assume that the airman, once a suspension is proposed, will ask if he can pay a civil penalty which will surely be paid to avoid the harsh consequences of forced unemployment.[113] Decades ago, the General Counsel of the Civil Aeronautics Administration formally acknowledged that the public criticized this procedure as "blackjacking," and all but forbade it.[114] Because so many shifts from certificate to civil penalty are reflected in the FAA's enforcement docket (shifts resulting in fines of $100-$300, rather than the much more costly suspension proposed), it is a reasonable inference that many, if not most, of these cases were so prearranged.[115]

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[107] *See* 1980 Handbook, *supra* note 17, ¶ 1202 e, at 165-67.

[108] 1926 History, *supra* note 54, at 45.

[109] *Id.* at 60.

[110] *See supra* note 55.

[111] 1980 Handbook, *supra* note 17, ¶ 1202 e(6), at 166-67.

[112] These took place in May 1980, while working as a consultant to the General Accounting Office, during a second field trip to Los Angeles. I visited several General Aviation District Offices throughout the state, and interviewed more than a dozen FAA inspectors.

[113] *Id.* One inspector (who shall remain nameless) told me that this had occurred in at least five cases during the previous six months. He had recommended civil penalties because, among other reasons, he was aware of the substantial economic impact a suspension would have on these pilots by keeping them from performing their jobs. When regional headquarters in Los Angeles changed his recommendation to one that certificate action be used, he called to find out why. He was told that headquarters was afraid the airmen might know that United States Attorneys might not process the case; the office feared that the airmen might sit back, ignore the matter, and wait to see what happened, and perhaps escape any penalty whatsoever. In at least one case the inspector got the civil penalty restored. So instead of a 30-day suspension, which would have cost the accused around $4,000 during the height of cropdusting season, the pilot paid a $250 civil penalty. Interview of May 29, 1980.

[114] CAA, Aviation Safety Manual of Procedure 103, at 65 (1954). In a memorandum to field lawyers appended to this manual, R.E. Elwell told them:

> There has been unfavorable public reaction to the few instances in which the [CAA] has [shifted from certificate to civil penalty action] . . . . Concurrent imposition of sanctions is attacked as "double jeopardy"; the withdrawal of one remedy to pursue another is criticized as "black jacking." The only way to assure the public of [our] good faith is to . . . consider the filing of a complaint for suspension or revocation as an election not to seek civil penalties for the same offense.

Only "under unusual circumstances," Elwell added, could the shift be made, and it would require "prior approval" from Washington.

[115] Cases picked at random from FAA's enforcement docket show that in June 1980, of 71 civil penalty cases against individual certificate holders, 26, or 37%, began as certificate actions and that 92% of these airmen held professional licenses. The average suspension proposed (for all certificates) was 53 days, the average money penalty paid instead, $340. The November 1977 docket shows that 28 of 79 cases, or 35%, originated as certificate actions; 82% held professional licenses. Average suspension was 63 days, average penalty paid, $209.

Typically the closing letters in these cases read:

> You are hereby advised that the Notice of Proposed Certificate Action [ATP, 15 days] dated March 5, 1980, is withdrawn in view of the fact that subsequent to its issuance in accordance with the offer of compromise suggested at your informal conference, you submitted a settlement offer of $300 in compromise of the civil penalties arising out of your alleged violation . . . . it has been concluded that the public interest requires no further action.

Another glaring weakness of civil penalties is that they are as difficult to collect as any other civil judgment. How do you levy execution on a $1,000 penalty against some youngster with no assets who buzzed his high school stadium during a football game? Recognizing that the civil penalty system has its weaknesses, this hardly justifies executive branch officials in taking the law into their own hands. Why didn't those early officials conscientiously work with the Justice Department, identify weaknesses, build data on civil penalty actions, then return to Congress and ask for something more effective? The answer lies partly in the nature of bureaucracy to never admit mistakes and the public pressures on aeronautics agencies to fulfill their mission of air safety. That pressure was exacerbated here by the sensationalism and emotionalism always attendant upon aircraft accidents.

Part of the problem was that in 1926, except in a few developed areas, the federal government was not a pervasive regulating force. Air traffic and maintenance rules were the sort of laws that states and cities routinely enforced. And significantly, they could do this in a well established infrastructure of petit courts where the threat of jail ('ten dollars or ten days') deterred non-payment of fines. To gain use of that infrastructure was no doubt a central reason why the House bill incorporated state courts into its criminal air-safety enforcement system.

FAA officials have attempted to justify their policy by invoking certificate actions in "operational"[116] cases, stating that "the withdrawal of the privileges of certificate is a natural, equitable, and just consequence of the abuse of such privileges."[117] This is the same logic that cuts off the hands of thieves. Moreover, the agency's sincerity in these statements is undercut by its own enforcement manuals, one of which notes that "most

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Ulmer, CE-80-OG-28 (June 18, 1980). Note how with a few spoken words a section 609 action was instantaneously transformed into a section 901 action. Occasionally the file reflects why the shift was allowed: "WHEREAS, you . . . advised that a 60-day suspension of your Commercial Pilot Certificate would render an air-taxi business owned and operated by you insolvent . . . it would be in the public interest to accept the . . . compromise offer [of $1,000]." Faulkner, AL-71-OG-36 (Feb. 25, 1972).

That "blackjacking" is an effective collection tool was amply demonstrated when one airman, allowed to pay $150 in installments of $50 per month, was told: "Please understand that this compromise is for settlement purposes only. If you fail to comply with all the terms of our agreement, we shall then have to enter an Order of Suspension in accordance with our Notice of Proposed Certificate Action dated January 7, 1980." Bell, NW-79-OG-244, (Jan. 24, 1980). *See also* Smith, *FAA Blackjack*, PROFESSIONAL PILOT, Feb. 1981, at 91.

[116] *See* 1968 Handbook, *supra* note 8, ¶ 9.c, at 9 ("Certificate actions should generally be used in operational violation cases . . . .") The new manual is less specific. *See, e.g.*, 1980 Handbook, *supra* note 17, ¶ 205.e(1) ("Civil penalties also may be initiated in any case where normally a suspension would be manifestly unfair or create an undue hardship and is not required for aviation safety"), 205.b(4) ("Suspension may be used for punitive purposes where the nature of the violation warrants it . . . .")

[117] *See* 1980 Handbook, *supra* note 17, ¶ 205.b(4).

violations are inadvertent,"[118] while another urges that "suspension action should be considered in serious cases where a severe penalty is warranted."[119]

The real reasons FAA officials use certificate actions are: 1) fear that United States attorneys will turn down small civil penalty cases so that the airman goes unpunished;[120] 2) it is an administrative burden to transfer the case or get permission to file directly in court where the FAA lawyer will be a mere technical advisor;[121] 3) under the administrative license sanction procedure the FAA lawyer controls the action, the case moves predictably through the NTSB, and he enjoys the challenge of playing prosecutor and trying the case himself;[122] 4) FAA's desire to put the violation on the certificate holder's record, so if he commits further offenses

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[118] *See* 1968 Handbook, *supra* note 8, ¶ 12.b, at 13.

[119] *See* Compliance and Enforcement, FAA Order 8030.7A, ¶ 131.a, at 96 (1970 & consolidated reprint 1977) [hereinafter cited as 1970 Handbook]. This manual was superceded by the 1980 Handbook, *supra* note 17, but its policies remain intact.

[120] Responding to a request from the FAA General Counsel Office (now Chief Counsel) for comments on proposed changes to the lawyers' 1968 Handbook, *supra* note 8, one official noted that:

> We have found in the past that some U.S. Attorneys are reluctant to process violation actions when the civil penalty involved is relatively small. In states where criminal cases are frequent and the U.S. Attorney's workload is great, the relatively minor civil penalty cases are given priorities which preclude timely disposition.

Letter from Paul J. Baker, Chief, Flight Standards Division, ANE-200, to AGC-30, Office of General Counsel (Mar. 7, 1973). During a later attempt to revise the 1968 Handbook, another noted:

> Many of the civil penalty actions which we are unable to settle are simply not of sufficient significance to warrant referral. The routine transmittal of such cases to the United States Attorney tends to take emphasis away from those cases which are genuinely significant to the agency.

Letter from Lawrence C. Sullivan, Regional Counsel, ANE-7, to AGC-20, Office of General Counsel (Oct. 6, 1977).

[121] *See* 1980 Handbook, *supra* note 17, ¶ 1202.e(6), at 166.

[122] In another comment on proposed changes to the 1968 Handbook, *supra* note 8, one FAA lawyer explained his frustration with civil penalties:

> We recently had occasion to try a case involving [an airline pilot] before Judge Hill of the U.S. District Court for the Northern District of Texas, Fort Worth, Texas. The Judge dismissed our case. We charged [the captain] with operating an unairworthy aircraft from Tampa . . . to Orlando, Florida. While we do not believe the particular facts warrant discussion here, we do want to point out that during the trial the Judge (and the U.S. Attorney trying the case) became hopelessly confused with our technical phrases and terms. At times the trial was almost a comedy in that the witness, the Assistant U.S. Attorney and the Judge were virtually speaking three different languages. Unfortunately, the true merits of the case were not the basis for the decision. It is our view that in enforcement cases we should avoid, when possible, going into court because, in most cases, none of the participants will have the slightest idea what is going on. While the phrase "unairworthy" is a difficult one for even agency personnel to discuss, we would recommend that you consider substituting certificate actions in lieu of civil penalties in most instances, the obvious reason being, of course, that success in imposing a sanction will greatly depend upon the forum of the case. We definitely recommend that technical matters be kept out of court and be tried before the NTSB if at all possible.

Letter from J.N. Coker, Regional Counsel, SO-7, to GC-1, Office of General Counsel (May 25, 1971). Note the clear assumption here that FAA officials have the unfettered right to determine the agency can justify more serious action;[123] and 5) as one manual suggests, FAA officials will deliberately put a man out of his job when they think even a stiff money fine would not be sufficiently harsh for the alleged violation.[124]

These reasons illustrate the pressure on FAA officials to unduly emphasize certificate actions, and indicate that the agency's enforcement program has been shaped to suit its, not the public's, convenience. In particular, they underscore the unfairness of a two-track, administrative-judicial enforcement program which allows the agency that initiates the prosecution to choose between the two tracks. That choice necessarily sets in concrete, right from the start, the method by which the accused is going to be punished and the kind of trial he will receive.

VI. THE COVERUP

It is reasonable to assume that a small core of government lawyers have always known of the certificate system's illegal nature. The troubling question is why none of these public officials have ever blown the whistle. The evidence is abundant that a conscious effort has been made by some government officials over the years to hide the lack of legitimacy of punitive suspensions and revocations. This effort has had many facets. We have noted several already: the specious arguments government lawyers have used to defend challenges to section 609; their continued citation to cases they know to be based on fundamental error; their failure to cause, or even attempt to cause, section 609 to be amended to say in plain language what they claim it authorizes them to do. Additionally, two other facets of interest are worth describing: 1) a deliberate effort to avoid telling the public how the FAA enforcement program works, the central feature of which is these officials' failure to promulgate rules that explain the two-track program; 2) the use of euphemisms, or word games, to make it seem that certificate sanctions have nothing to do with "punishment."

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whether or not the accused will ever have the opportunity to "demand" his section 903 right to jury trial in a section 901 civil penalty case.

[123] *See* 1968 Handbook, *supra* note 8, ¶ 12 a, at 12 ("Among questions to be considered in determining an appropriate sanction is whether the violator has a prior record. If so, its recency and nature should be considered. In an airman case, repetition of similar types of violations would normally require a greater sanction."). Although FAA counsel in my experience will consider a prior civil penalty in proposing the size of a certificate penalty, agency policy is that he cannot introduce that before the NTSB where the ALJ might use it. *See* 1980 Handbook, *supra* note 17, fig. 12-5, at 208 ("[A] settlement will not constitute an admission of violation.").

[124] *See* 1968 Handbook, *supra* note 8, ¶ 9 b, at 8 ("Civil penalties . . . should also be used as the normal sanction for less serious violations . . . ."). Michael Pangia also relates: "By holding his client in check [at the informal conference] the attorney was able to obtain a reduction of the proposed six-month suspension to a civil penalty." Pangia, *supra* note 15, at 595.

A. FAILURE TO PROMULGATE RULES

The efforts of federal aviation officials to prevent the public from comprehending the enforcement program and to deflect attacks on it have involved acts of both omission and commission. For example, the FAA has never in its quarter-century of existence published a simple, comprehensible booklet that explains the program to pilots or mechanics. Although agency officials would argue that their enforcement handbook serves this purpose, the fact remains that this manual, a consolidation of materials intended to be internal documents, is lengthy and complicated. As a matter of agency policy, its enforcement manuals were kept from the public until 1970 when a Freedom of Information Act lawsuit[125] forced their release. The present handbook can sometimes be helpful, but many airmen do not know it exists. It is not readily available at airports or FAA field offices and must be ordered from Washington.

Nor does the FAA mention the handbook in the Notice of Proposed Certificate Action[126] or Civil Penalty Letter,[127] which is when it would be of the most help to the accused. Moreover, this handbook, though the only information source, is as notable for what it does not explain as for what it does. It does not explain how easy it is to go to trial before the NTSB: that an ALJ will fly out from Washington to the airman's hometown to preside over the case; that the trial is much like any traffic court; that many airmen defend themselves without counsel; and that there are no court costs. One regional counsel, when asked why FAA has never prepared a booklet that explains the system in layman's terms, and especially one that explains the NTSB hearing process, underscored the reason for the omission. "If we told pilots how easy it was to go to trial at NTSB, we would be swamped with trials."[128] My own experience confirms that many airmen, even lawyers, do not know about civil penalties and the possibility of switching to a money fine from a suspension. They naturally focus on the certificate notice they have just received and are given no reason to assume there is any other alternative.

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[125] Smith v. United States, No. 3525-69 (D.D.C. 1969); *see also DOT Gives Copies of Handbooks to Man Who Sued to Release Them*, 187 AVIATION DAILY 317 (Feb. 20, 1970).

[126] *See* 1980 Handbook, *supra* note 17, fig. 12-8, at 214-18.

[127] *See id.*, figs. 12-1 to 12-5, at 201-09.

[128] Statement by Dewitte T. Lawson, Jr., FAA Western Region Counsel at a Meeting on Jan. 24, 1980, at FAA Western Region Headquarters, Los Angeles. Among those present were Lawson, his assistant Fred Woodruff, U.S. General Accounting Office officials Ken Dobbs and Jeffrey McGowan and myself. The purpose of the meeting was to have Lawson explain to Dobbs and McGowan how FAA enforcement worked. Asked if from a philosophical standpoint (meaning due process) the airman ought to be told how enforcement worked, Lawson replied, "No." Neither did he think the pilot needed to know in advance whether the sanction for a violation was going to be a suspension or a civil penalty.

The centerpiece of this facet of the coverup is FAA's failure, in violation of the Administrative Procedure Act (APA),[129] to adopt as formal rules a formidable array of enforcement policies. The APA mandates that federal agencies inform the public of their basic policies and procedures and allow public comment when they are formulated and promulgated.[130] Interestingly, one rule FAA did promulgate underscores the basic reason for this failure—FAA officials' sensitivity to their lack of authority for the two-track enforcement program. This rule purports to restate section 901, which provides that "*Any person* who violates . . . *any* provision . . . [of this Act], or *any* rule, regulation or order issued thereunder . . . *shall be* subject to a civil penalty of not to exceed $1,000 for each such violation . . . ."[131] FAA's version, contained in FAR section 13.15, states:

> (a) Under sec. 901 of the Federal Aviation Act of 1958 . . . *a person* who violates any provision . . . of that Act, or any regulation or order issued [thereunder] . . . *is subject* to a civil penalty . . .
>
> (b) The Administrator may compromise any civil penalty. *If a civil penalty is contemplated* and it is considered advisable to compromise it . . . the Regional Counsel concerned sends a letter . . . .[132]

Regardless of how many courts of appeal uphold punitive suspensions, FAA officials realize that the plain command of section 901 ("shall be subject to a civil penalty") cannot be reconciled with their two-track enforcement program. They have subtly twisted the law to fit their rule, rather than fit their rule to the law.[133]

The most striking aspect of the FAA's failure to promulgate rules explaining enforcement is the fact the agency has no rule that tells pilots and mechanics that licenses are at risk for a safety violation.[134] FAA officials would claim that FAR section 13.19[135] serves this function. Yet this rule simply paraphrases section 609, which says nothing of violations, offenses or regulations; it speaks only of reinspections and reexaminations, matters unrelated to violations, and is for that reason misleading. Other FAA rules, such as FAR sections 13.11, 13.15 and 13.16,[136] however, do use "violation" and similar terms freely. It is clear that use of the word "violation" was carefully avoided in section 13.19 in order not to draw attention to section 609's deficiencies.[137]

As we have seen, at one time the federal government did have a concise rule that informed pilots and mechanics that their licenses could be suspended or revoked for safety violations.[138] In 1938, this rule, along with an entire body of regulations promulgated under the 1926 Act, was recodified for publication in the seminal edition of the *Code of Federal Regulations*.[139] Then inexplicably, in 1940, this rule, and several related ones, simply disappeared from that Code, never to resurface.[140]

The new five-member Civil Aeronautics Authority, established under the 1938 Act, took office in August of that year. Except for technical changes to assure conformity with the new Act, its members adopted the existing regulations in the *CFR* in toto, which included the violation-suspension rule.[141] A thorough search of original Civil Aeronautics Authority minutes at the Federal Records Center at Suitland, Maryland, unearthed no record of any subsequent action in connection with that rule. So how did it disappear? The only reasonable inference is that former Commerce Department aviation officials, now working for the new Authority, took it upon themselves, when supplying revisions for the 1940 *CFR*, to drop the suspension-revocation rule without Authority members' approval or knowledge.[142]

Why would these men tamper with the regulations? They were faced with a problem, created by an obtuse clause in section 609 of the 1938 Act: "The Authority . . . may revoke, in whole or in part, any such certificate for any cause which, at the time of revocation, would justify the Authority in refusing to issue to the holder of such certificate a like certificate."[143] The 1926 Act contained no such clause, and the 1938 legislative history gives no clue as to its purpose or roots. The clause was later deleted in the 1958 Act, also without explanation.[144]

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[129] 5 U.S.C. §§ 551-576 (1982).

[130] *Id.* § 553.

[131] 49 U.S.C. app. § 1471(a)(1) (1982) (emphasis added).

[132] 14 C.F.R. § 13.15(a)(b) (1983) (emphasis added).

[133] Note that while the rule mentions further proceedings in federal court, it does *not* mention jury trial, were it to, it would raise the obvious questions. *But see* 14 C.F.R. §§ 94.31, 94.310 (1938) (which advised the public of the civil penalty right to jury).

[134] The regulations that FAA has promulgated demonstrate that exceptions often prove the rule. *See* 14 C.F.R. §§ 61.15, 91.12, and 67.20 (1985). The first two, by a kind of incorporation by reference, combine to prohibit the operation of civil aircraft "with knowledge that narcotic drugs" are aboard; sec. 61.15(c) makes this action "grounds for suspending or revoking any certificate or rating issued under this part." Section 67.20 provides that "any fraudulent or intentionally false statement on any application for a medical certificate . . . is a basis for suspending or revoking any . . . certificate . . . ." Although the word violation is never used in these, we see here that FAA lawyers *can* write a regulation that tells the public, "you break a rule, we'll take your license." If FAA claims authority to suspend or revoke for *all* violations, why single out just these two?

[135] 14 C.F.R. § 13.19 (1984).

[136] *Id.* §§ 13.11, 13.15, 13.16.

[137] When drafting Administrator Langhorne Bond's "get tough" enforcement policy, FAA lawyers used "violations" or similar terms 28 times. *See* FAA Order 1000.9C (Apr. 26, 1979).

[138] 1926 Rule, *supra* note 12.

[139] *See* 14 C.F.R. §§ 20.37, 20.37110, 20.46, 20.463, 21.27110 (1938).

[140] *See* 14 C.F.R. pt. 20 (1941) and 14 C.F.R. §§ 20.35, 20.36 (1943).

[141] *See* 10 CAA Air Com. Bull. 84 (Sept. 15, 1938); *see also id.* at 184 (Jan. 15, 1939).

[142] *See* 5 Fed. Reg. 676 (1940).

[143] Civil Aeronautics Act of 1938 § 609, 52 Stat. 973, 1011.

This clause, in a roundabout fashion, made it plain that licenses were to be revoked only for lack of qualifications, not as a penalty for safety violations. It is fair to assume that these officials, who for the previous twelve years had been doing just that, realized that their rule was now directly contradicted by the new statute. They knew that in order to have the rule amended they would have to go through a hearing process before the Authority. They had to have been painfully aware that the emperor wore no clothes and that their lack of authority in the first instance would become evident, so they decided not to risk public involvement and the questions such a move would entail. At first opportunity, then, they let the suspension-revocation regulation slip through the cracks. Since their successors have also failed to promulgate a replacement, it is now clear why for forty-five years the federal government has had no rule that directly tells pilots and mechanics that their licenses are at risk for a rules violation.

In 1946, the Civil Aeronautics Administration (in 1940 the Authority was split into the CAB and CAA) gave the enforcement rules, which had been retained, a major overhaul. It promulgated a comprehensive rule on procedure that only indirectly referred to certificate sanctions, and which explained that violation cases would be handled by: (a) administrative letter of reprimand; (b) section 901 civil penalties; or (c) filing of a complaint before the CAB "with a view toward the suspension or revocation of a safety certificate issued . . . to the alleged violator."[145] Note that the CAA here cited section 901 but not section 609.

In 1950 this rule underwent major change and each subparagraph was placed in a separate rule of its own.[146] Subparagraph (c) read:

> *Complaints.* Under section 1002 of the act, the Administration [CAA] may file with the Board a complaint in writing, with respect to anything done or omitted to be done by a person in contravention of any provision of the act or any requirement established pursuant to the act. *Under section 609* of the act the Board may suspend, in whole or in part, any type certificate, production certificate . . . airman certificate . . . air agency certificate issued by the Administration, if the interest of the public so requires, or it may revoke, in whole or in part . . . . After such a complaint has been filed, the Board will determine administratively whether a certificate issued by the Administration to the alleged violator shall be suspended or revoked . . . .[147]

This regulation was a calculated misrepresentation of section 1002.[148] That section allows "any person" to file a complaint with the Board; it says nothing of "Administration." That section's main thrust was not safety enforcement but rather, for instance, to allow residents of Cedar Rapids, Iowa, to complain to CAB if United Airlines failed to provide the service called for by its certificate of convenience and necessity.[149] Section 609 says nothing of "complaints."[150]

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[144] *See* Laster, 31 C.A.B. 1162 (1960) (indicating that even though the clause was dropped in 1958 the Board continued to act as if it were still there). *See also infra* note 178.

[145] 14 C.F.R. § 651.21 (1947). *See also* 14 C.F.R. § 405.21 (1950).

[146] 14 C.F.R. § 408.22 (1951) (subpara. (a)); *id.* § 408.23 (subpara. (b)); *id.* § 408.26 (subpara. (c)).

[147] 14 C.F.R. § 408.26 (1951) (emphasis added).

This was policy searching for a rationale. Coupling section 1002 to section 609 was an attempt to invest the latter with authority it plainly did not contain itself. This long forgotten CAA regulation is compelling evidence that government aviation officials have never acted in good faith when claiming that section 609 authorizes a punitive certificate sanction system of administrative justice.

No such claim about "complaints," invoking section 1002, has ever been made in any subsequent regulation. When, in 1958, many of these same officials, now part of the new Federal Aviation Agency, were required to promulgate new regulations in all areas of the Agency's activities, their solution to the lack of a legal rationale for certificate actions was to remain silent. They simply formulated their new certificate rule, FAR section 408.25[151] (the forerunner to today's section 13.19) to paraphrase section 609.

As mentioned above, public input has never been allowed in the making or shaping of punitive certificate sanction policy. Created in 1958 as a new and independent agency (and since 1966 an "administration" within the Transportation Department), FAA was required to promulgate totally new rules. How, then, did agency officials avoid the APA mandate that "interested persons" be given "an opportunity to participate in the rule making,"[152] when it adopted its new enforcement procedure rules (including FAR section 408.25)? They simply ignored it. Making no mention of APA requirements for public participation, their *Federal Register* notice recited:

> Effective December 31, 1958, Part 408 of the Regulations of the Administrator of Civil Aeronautics is hereby repealed, and a new Part 408 containing the enforcement procedures of the Federal Aviation Agency is hereby adopted to read as follows . . . .[153]

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[148] *See* Civil Aeronautics Act of 1938 § 1002(a), 52 Stat. 973, 1018.

[149] *See* Nebraska Dep't of Aeronautics v. CAB, 298 F.2d 286 (8th Cir. 1962) (concerning adequacy of certain air service within the state of Nebraska); *see also* Flying Tiger Line v. CAB, 350 F.2d 462 (D.C. Cir. 1965), *cert. denied*, 385 U.S. 945 (1966); Foremost Int'l Tours, Inc. v. Qantas Airways, Ltd., 525 F.2d 281 (1975), *cert. denied*, 429 U.S. 816 (1976).

[150] *See supra* note 80 for the 1938 version and *supra* text accompanying note 50 for the 1958 version.

[151] 14 C.F.R. § 408.25 (1959).

[152] Administrative Procedure Act § 4(b), 5 U.S.C. § 553(c).

[153] 24 Fed. Reg. 10 (1959). The FAA has also ignored the clear APA directive that a "sanc

Earlier in this same *Federal Register* issue, in a notice about the new Part 405 on rulemaking procedures, the FAA explained their failure in that instance to allow public participation: "Since this amendment is not a substantive rule but one of Agency procedure, notice and public procedure hereon are unnecessary."[154] Notably—and rather ironically—in their preamble to part 405, the FAA stated:

> The Agency will follow the procedures required by the Administration Procedure Act for prescribing both substantive rules, on the one hand, and interpretative rules, general statements of policy, rules of Agency organization, procedure and practice, on the other hand.[155]

Under the APA, FAA enforcement policies are subject to the following Congressional commands:

> [1] each agency shall separately state and currently publish in the Federal Register for guidance of the public—(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained . . .
> (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.[156]
> [2] Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.[157]

The APA and court decisions leave little doubt of its application here, and that the government's failure to promulgate rules is an absolute defense to punitive certificate action.[158] It is surprising that the vulnerability of FAA enforcement to the APA has escaped the attention of the aviation bar for so long. Perhaps this is because too many aviation bar members have never really understood the depth and importance of the APA. Senator Pat McCarran, its sponsor, called that Act: "a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the federal government. It is designed to provide guaranties of due process in administrative procedures."[159]

In *NLRB v. Wyman-Gordon Co.*,[160] the Court noted that:

> the rule making provisions of [the APA] . . . were designed to assure fairness and mature consideration of rules of general application . . . . There is no warrant in law for the Board to replace the statutory scheme with a rule-making procedure [here by adjudication] of its own invention.[161]

In the landmark case of *Morton v. Ruiz*,[162] the Court declared agency action void for lack of formal promulgation and publication in the *Federal Register*. Ruiz and his wife were Indians who lived off their reservation but nearby. They were denied special welfare benefits by the Bureau of Indian Affairs (BIA) because a rule in a BIA staff manual limited eligibility to those Indians who were living "on reservations." The Court held that the complainants' rights could not be extinguished since the rule in the manual had not been published. The Court made it plain that if and when BIA should adopt such a rule:

> [I]t would be incumbent upon [the agency] to develop an eligibility standard . . . [and] must, at a minimum, let the standard be generally known so as to assure that it is being applied consistently and so as to avoid both the reality and the appearance of arbitrary denial of benefits to potential beneficiaries.
>
> . . . No matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an *ad hoc* basis . . . .
>
> The Administrative Procedure Act was adopted to provide, *inter alia*, that administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished *ad hoc* determinations.[163]

Morton v. Ruiz is particularly applicable because FAA officials have no publicly known, sensible criteria or standards for making the choice between placing an accused on the certificate track or on the civil penalty track, nor any criteria for switching from one to the other. An airman is left to wonder why another airman was allowed to pay a money fine, and thus save his job, while he was not. Nor do airmen know that all such determinations are made on an ad hoc basis, and are often based on personal whim or prejudice.

Just after its creation, then, in direct violation of the APA, the FAA failed to lawfully promulgate its entire set of enforcement procedures, in-

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tion may not be imposed . . . except within jurisdiction delegated to the agency *and as authorized by law*." 5 U.S.C. § 558(b) (emphasis added). This simply means that the FAA's organic act must state in plain terms that suspension and revocation may be used as a sanction for the violation of a safety rule, which it does not.

[154] *Id.* at 8.

[155] *Id.* As proof of the obvious, that FAA lawyers know full well what APA requirements are. *See* 35 Fed. Reg. 5464 (1970) ("The purpose of these amendments to Part 13 [Enforcement Procedures] of the Federal Aviation Regulations is to eliminate the FAA formal hearings in certificate proceedings taken by the Administrator pursuant to section 609 [leaving of course the NTSB hearings which they duplicated] . . . . Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rule making . . . in the *Federal Register* . . . .").

[156] 5 U.S.C. § 552(a)(1)(C)-(D).

[157] *Id.* § 552(a)(1)(E).

[158] *Id.* *See also infra* text accompanying notes 162-63; Northern California Power Agency v. Morton, 396 F. Supp. 1187, 1191 (D.D.C. 1975), *aff'd*, 539 F.2d 243 (D.C. Cir. 1976) ("The statute [5 U.S.C. § 552(a)(1)] clearly provides that no administrative action taken pursuant to unpublished procedures can be allowed to stand against a person adversely affected thereby.")

[159] S. Rep. No. 248, 79th Cong., 2d Sess. 298 (1946).

[160] 394 U.S. 759 (1969).

[161] *Id.* at 764.

[162] 415 U.S. 199 (1974).

[163] *Id.* at 231-32.

cluding the rule they would claim spells out their punitive certificate sanction system. Although minor bits and pieces added later may have been properly adopted, that illegal action has never been rectified. Government aviation officials in 1958—and of course since—knew it was risky to open up the section 609 legal issues by placing on record a purported statement of their statutory authority, that it would likely unleash a hornet's nest of opposition from tens of thousands of pilots and mechanics who to this day do not comprehend the FAA's inordinate use of license suspensions and revocations.

This is also why the FAA has never adopted as formal rules many basic enforcement policies. Among these, critical to airmen's rights is agency policy about "blackjacking:"

> *Shift in sanctions.* Ordinarily it will not be FAA policy to withdraw one remedy, after it has been commenced, to pursue another, although circumstances may arise in which such action is appropriate. An example where such action would be appropriate is when counsel has commenced certificate action against a pilot and thereafter learns that the pilot uses an aircraft in business or a profession and that the proposed suspension would constitute a sanction more severe than is warranted by the violation. Contrary situations will also occur.[164]

Although this power to shift a sanction can affect the livelihood of a pilot, mechanic or air-taxi operator, it is not contained in any formal FAA regulation. The CAA, however, did have a formal regulation that at least indirectly recognized the civil penalty as an alternative to certificate action.[165] When it had its own hearing program, FAA promulgated a rule that authorized its hearing officer to settle any certificate case he was hearing with a civil penalty,[166] but the agency has never had any rule that tells the airman he may ask for the shift, or the criteria for its use. The hearing officer rule is no longer on the books because the program was dropped long ago.[167]

The suggestion in the 1980 handbook that shifts are seldom made, and then only when the pilot's need for his license comes as a surprise to FAA counsel, is a good example of the Agency's lack of candor about its two-track program. Field inspectors invariably find out what the pilot does with his license and note that in their report. It would be highly unusual if counsel was not keenly aware of it. As discussed earlier, the practice of making shifts in sanction has become routine.[168]

The reason FAA officials have never promulgated this major policy as a rule is clear. There is *nothing* in the Federal Aviation Act of 1958 to back it up. In 1951 the CAA General Counsel tacitly conceded that the procedure was a form of blackjacking;[169] any Notice of Proposed Rulemaking (NPRM) would necessarily rekindle public sentiment, and the extensive use of blackjacking would become apparent. Public debate would then force FAA to address the unanswerable questions concerning the accused's right to jury trial and criteria used to choose the certificate or civil penalty track in the first instance.

As late as 1980, these same officials, in their new handbook, repeated the timeworn claim that they may institute both civil penalty and certificate actions for the *same* offense. They claim that "as a matter of law" an election to impose one sanction is not a bar to a concurrent proceeding to impose another, although "such action has the appearance of 'double jeopardy' and, in the usual situation, it is not necessary . . . ."[170] Were FAA to make a formal rule of this, these officials would have to explain on the record why Congress would authorize an enforcement program in which the FAA could prosecute an airman in federal court where a jury could find him *not guilty*—and in any event impose only a money fine—and at the same time pursue him before NTSB where an ALJ could find him *guilty* of the exact same violation and take away his license as punishment.[171]

The CAB, until 1966, and then NTSB, which assumed CAB's quasi-judicial authority in air-safety cases, as well as accident investigations, bear much of the responsibility for allowing this to go on. In *Petition of Sichel*,[172] the CAB stated that the FAA could not deny an application for a student pilot certificate (by a formerly revoked private pilot) on grounds he lacked "the care, judgment, integrity and responsibility required of the holder of an airman certificate."[173] The Board indicated that it thought FAA had the authority to lay down such standards, but said:

> [I]t does not follow that the administrator may apply such standards to applicants where he has not prescribed [them] . . . in the Regulations . . . .
> [I]t is our view that applicants for certificates are entitled to have notice of the eligibility requirements which they must meet . . . .[174]

This is precisely what the APA commands, and the Board cited that Act as authority for overturning the denial.[175]

Sichel highlights a continuing conundrum, the existence of which reflects unfavorably on both NTSB and FAA. Although the Board recognized that the APA requires formal promulgation of rules which set forth the standards for a given certificate, it pointed out that it was also CAB policy to approve revocations ordered by the FAA under section 609 that were based on the same grounds that the Agency was using to deny Sichel his student license.[176] Yet the Board made no effort to reconcile the blatant inconsistency of this policy. If there must be rules on the books to deny a certificate, why would there not have to be similar rules and standards on the books in order to take it away?

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[164] 1980 Handbook, *supra* note 17, ¶ 1202 1(4), at 163.

[165] *See* 14 C.F.R. § 651.21 (1947).

[166] 14 C.F.R. § 13.67(a) (1968).

[167] *See* 34 Fed. Reg. 20,064 (1969).

[168] *See supra* note 115.

[169] *See supra* note 114.

[170] 1980 Handbook, *supra* note 17, ¶ 1202 a(3), at 163; *see also id.* ¶ 205 a(2), at 15.

[171] "It is the present policy of the FAA not to bring both types of actions for the same violation so as to avoid any appearance of double jeopardy, although if the violations are serious enough there is nothing to prevent the FAA from doing so." Pangia, *supra* note 15, at 593.

[172] Sichel, 39 C.A.B. 975 (1964).

[173] *Id.* at 976-77.

[174] *Id.* at 976.

[175] *Id.* at 977 n.10.

The NTSB and FAA continue to ignore *Sichel* to this day. The Board, when it believes the airman's "repeated offenses" warrant it, continues to affirm FAA revocations on an ad hoc basis.[177] It does this by sleight of hand: the case often begins as a punitive action for the immediate violation that triggered the case, a violation that usually only deserves a suspension. But with any prior violations tacked on (for which the airman has already paid the penalty), the ALJ may determine that he lacks the "qualifications" to hold his license;[178] or he may determine, also ad hoc, that the infraction alone is serious enough to reflect a lack of qualifications.[179]

One cannot deny there is some logic to linking qualifications and number of violations, but the problem is that there is no rule.[180] There is no specific cutoff period for considering past infractions. In one case, the

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[176] *Id.* at 976.

[177] *See* Air East, Inc., 2 N.T.S.B. 870 (1974); Stewart, 2 N.T.S.B. 1140 (1974).

[178] *See* Lasler, 31 C.A.B. 1162, 1163 (1960) ("[W]e agree with the examiner's adherence to our traditional view that revocation, unlike suspension, is not warranted absent a showing that the holder is lacking in qualifications to hold the certificate. Although the 1958 Act no longer explicitly makes this distinction between the grounds for revocations and for suspensions, we do not view the amendment of section 609 to require abandonment of this appropriate differential standard adopted by the Board and approved by the courts. . . . Although willful and deliberate disregard of the Civil Air Regulations is evidence of lack of qualifications, respondent's knowing violations, of which only the acrobatics caused a safety hazard, are isolated and not part of a pattern of continuing or defiant disrespect for the regulations."); Bittner, 39 C.A.B. 952 (1964).

[179] *See* Otten & Gabrick, 1 N.T.S.B. 1002, 1007 (1970) ("We recognize that a finding of lack of qualifications in cases involving a single flight has traditionally been based on deliberate or reckless violations of the regulations. We also are of the view, however, that carelessness of an extreme nature, such as that involved herein, is grounds for such a finding [on an ad hoc basis]."); Hall, 1 N.T.S.B. 824 (1970).

[180] But it cannot be disputed that FAA lawyers know there should be a rule. In a 1971 memorandum, then General Counsel (the title is now "Chief Counsel") George U. Carneal, Jr., told the FAA Deputy Administrator:

> [T]he regulatory proposals are progressing satisfactorily. . . . The project dealing with compliance disposition [a euphemism for "repeated offenses"] has been restructured and returned to Flight Standards for further work. We will by this project require willingness or "compliance disposition" as a prerequisite [for section 602 certificate applications] and continuing element of qualifications [under section 609] for all FAA certificate holders.

FAA Memorandum (Oct. 18, 1971). Never completed, it is my view this project was quietly buried by the bureaucracy after Carneal left. The project is an admission that the FAA has re-

ALJ talked about (but decided not to consider) a violation that was fifteen years old, committed when the pilot was a youngster, but who was now supporting a family as a flight instructor.[181] A review of hundreds of FAA enforcement cases indicates that ALJs routinely look at violations that are five and ten years old. Often the airman is not told up front that any past violations will be used against him, and they are brought up at the last minute when he has no chance to prepare to explain them.[182] Fair warning, standards for what type of past violation will be used, and a sensible cutoff date constitute due process and provide a method for public participation.[183] The Court of Appeals for the Ninth Circuit touched upon the heart of the matter when it said in *Jensen v. Administrator of Federal Aviation Administration*[184] that "public interest" and "safety" as standards, and nothing more, "do not give the court a sufficient basis for review. Neither do they give the applicant any basis for planning his course of action (including the seeking of judicial review)."[185]

Why has this been allowed to go on? FAA lawyers are no strangers to the APA—they have drafted hundreds of regulations in accordance with its procedures. It is no burden on agencies to promulgate their policies as rules, especially when they have been in force for half a century. FAA failure to do so is not from oversight: "The Office of Chief Counsel," an FAA Order commands, "is responsible for . . . [r]eviewing internal directives and advisory circulars to assure they are neither used for nor

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voked hundreds of pilots and mechanics for repeated offenses in violation of due process and the Administrative Procedure Act.

Nor can it be disputed that the Board knows there should be a rule. *See* Bowman, 1 N.T.S.B. 1279, 1280 (1971) (refusing to order revocation of a commercial pilot certificate on grounds of intoxication where the pilot had simply taxied his aircraft several hundred feet without takeoff or incident. "[T]here has been no CAB or NTSB policy requiring revocation for violations of the [alcohol rules], *nor do the FAR's provide for such a mandate*.") (emphasis added); *see also* Robinson, 1 N.T.S.B. 739, 741 (1970) ("Revocation is so serious a sanction that in imposing it, the crucial question is lack of compliance qualification shown by such disdain, contempt, or disregard for law and authority in general and the regulatory authority of the Administrator and the Board in particular, that a similar pattern of conduct or attitude may reasonably be expected to be manifested by the respondent in exercising the privileges and duties for which he has been certificated.").

[181] Transcript at 453, 482-83, McGee, No. SE-5047 (N.T.S.B. Nov. 18, 1981).

[182] There is no rule on the subject today, but *see* 14 C.F.R. § 301.5 (1956):

> *Record of previous violations.* Where a Respondent has had a certificate suspended or revoked or has had a civil penalty assessed against him for a violation or has been subjected to any previous disciplinary action for violation of air safety standards, the [CAA] Administrator shall serve notice on the Respondent prior to hearing, or to submission of evidence where hearing has been waived, that he intends to call such matters to the attention of the examiner. . . . The Respondent may file with the Administrator such reply as he deems advisable.

See also id. § 301.26.

[183] *See supra* notes 158-63 and accompanying text.

[184] 641 F.2d 797 (9th Cir. 1981), *vacated*, 680 F.2d 593 (9th Cir. 1982).

[185] *Id.* at 799.

have the effect of regulations and are consistent with the regulations."[186] FAA lawyers are keenly aware of their obligations to the public. In 1965, the FAA Associate General Counsel, Regulations and Codification Division, told the Associate General Counsel, Enforcement Division:

> This paper discusses the investigation procedure in the memorandum on "Change No. 13 to Enforcement Handbook Formal Investigation . . . ." This division is concerned in the matter because it will have to write the rules to implement the proposed Handbook Change. *The rules and the Handbook would of course have to be substantially identical.*
>
> *Under sec. 3(a) APA the internal rules cannot be effected via-a-vis the public until the procedural rules are published.*[187]

Each of the policies we have examined here is referred to, at least to some extent, in FAA's enforcement handbook. Although it is the Agency's official position that they need not be formally promulgated, how can it be argued that these policies are less deserving of promulgation as formal regulations than a policy about investigation procedure? The FAA memorandum underscores the logical inconsistencies that FAA officials must ignore in order to maintain their unauthorized punitive certificate sanction system.[188]

FAA officials themselves have acknowledged the importance of their handbook. Administrator Langhorne Bond, who, along with his well-advertised "get tough" policy, instigated the new handbook, said of it: "This not only will help the FAA itself become more consistent, but will also let the public know what they can expect from us."[189] His Chief Counsel Clark Onstad stated: "[A] key advantage of the new 280-page handbook, which replaces four previous handbooks, is that it codifies enforcement procedures for handling proceedings and provides the public with a way to appeal FAA actions."[190] Testifying before a Congressional committee, Deputy Chief Counsel Jonathan Howe stated: "We think we are bound [in hazardous materials cases] just as strongly by the provisions in this handbook and we certainly have, in the past, administered our civil penalty statute [for air-safety cases] in exactly that manner . . . ."[191]

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[186] FAA Rulemaking Policies, FAA Order 2100 13, ¶ 33 B, at 14 (1976)

[187] FAA Memorandum (Mar 2, 1965) (emphasis added)

[188] *See* FAA Rulemaking Policies, FAA Order 2100 13, ¶ 22 a, at 8 (1976) This counsels FAA officials

> A primary Congressional consideration underlying the Administrative Procedure Act is that a regulatory agency afford the public an opportunity to participate in its rulemaking processes. Both the letter and the spirit of the rulemaking provisions of this act shall be observed. FAA follows the principle that the public interest is best served when regulatory affairs are open to the pubilc to the fullest extent possible

[189] *See* Leyden, *Enforcement Policies for the 80s*, FAA WORLD, June 1980, at 4

[190] AV. WK. & SPACE TECH., June 9, 1980, at 34

[191] *Providing Additional Civil and Criminal Penalties for Aviation Safety Violations: Hearings on H.R. 7488 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 96th Congress, 2d Sess. 41 (1980)

Despite these grandiose statements, FAA officials continue to operate as if they have never heard of the Administrative Procedure Act. It is clear that although the failure to promulgate rules, and lack of statutory authority for certificate sanctions, are legally distinct issues, on the practical level they are inextricably intertwined. It should be obvious by now that FAA officials do not do the former because they know they lack the latter.

B. THE WORD GAME

A most interesting part of the coverup is the FAA's use of euphemisms designed to make punitive suspensions and revocations seem as if they are something else besides penalties (though just what else is unclear). One FAA lawyer volunteered, during a meeting, that: "When we suspend a man's license for a violation, that is not 'punishment,' that is a 'remedial' action."[192] He freely conceded, however, when asked, that he could have begun the same case as a civil penalty, and that of course would make it punishment; or that having started it off as a certificate action, he could shift it over to the money fine.[193] At the same time, during an informal conversation, an NTSB lawyer related that: "The Board never uses the word 'punishment,' all *our* actions are 'remedial.'"[194] Throwing reality to the winds, both officials were following the company line.

Although most of the hundreds of section 609 punitive certificate cases appealed to the Board every year involve one or more "violations," and the pleadings, parties, ALJ and Board freely use the term, *nowhere* in the Board's rules of procedure for these situations does that term, or "punishment," or "penalty" appear.[195] In one rule it does mention "offenses" and "proposed remedial sanction."[196] It would strain credulity to assert this careful wording was accidental.

The "remedial" fiction is a legacy from the CAB. It may have gotten started in the mid-1950's when sensitivity to the section 609 challenges of Captains Wilson and Hard became acute, or circa 1940 when the 1926 Rule was surreptitiously dropped because of that peculiar clause in section 609 of the 1938 Act which made it clear revocation could be used only for qualifications. In *Wilson*, CAB averred that "[t]he Board's purpose is the remedial one of promoting safety, and not of punishing the offending pilot."[197] This was pure sophistry. The purpose of *any* enforcement system is to punish offenders so they will not do it again, and to serve as a warning to others, in order to promote the goals of that particular system of laws or rules. Yet the "remedial" word game has persisted to this day. The effectiveness of this strategy is demonstrated by *Wilson*, where CAB succeeded in causing the Court of Appeals for the D.C. Circuit to become preoccupied with terms like "discipline" and "deterrence"; the same is true for *Hard*, its companion case before the Seventh Circuit. In an apparent putdown, the *Hard* court said: " 'Penalty,' as a symbol repeatedly used by this petitioner is singularly ineffective for gauging the scope of power granted the Board by Congress."[198]

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[192] *See supra* note 128

[193] *Id*

[194] This meeting took place during February 1980 with NTSB staff lawyer Margaret Sweeney, in her office (emphasis added)

[195] *See* 49 C.F.R. §§ 821.1 to .64 (1984)

[196] *Id.* § 821.33, 821.33(b)(2)

[197] Brief for Respondent at 7, *Wilson*. Another splendid example of how this patent non-

The hypocrisy of this softpeddling of certificate sanctions is no better exposed than by FAA's enforcement manuals: "Suspension may be used for punitive purposes where the nature of the violation warrants it . . . ."[199] "Revocation should also be used for punitive purposes where the nature of the violation warrants it."[200] The field inspectors' manual notes: "Although reexamination of . . . airmen and reinspection [of] . . . aircraft . . . do not involve enforcement in the strict sense of 'punishment of offenses,' they are considered in this handbook because the objective and the procedures are identical with those applicable to enforcement matters.[201] The Agency's very first enforcement handbook provided:

> [I]t should be noted . . . that a violation of any rule, regulation or order issued by the Administrator is punishable either by certificate or civil penalty action. Furthermore, a certificate holder may perform some act which is neither a violation of the Federal Aviation Act nor any rule, regulation or order issued thereunder, which might be considered either as demonstrating a lack of qualification to continue to hold the certificate or as being an act for which safety in air commerce and the public interest requires he should be punished by a suspension of his certificate.[202]

In this explanation of its own powers, FAA was stating that despite the fact that the airman has *not* committed a violation, or is not technically unqualified to hold his certificate, if FAA does not approve of whatever he did, and FAA deems it to be in the interests of air safety and the public, FAA will punish him by suspension. This attitude towards enforcement and the public's right to know is no better exemplified than by this accompanying directive:

> Manual of Procedure 22 is an internal Agency issuance and is intended solely for the use and guidance of Agency personnel. The contents shall not be released to anyone outside of the Agency nor shall any reference to this manual be cited in oral or written communications to the public.[203]

These formal statements are nowhere to be found today. Nevertheless, that these attitudes remain unchanged can be seen from the actions of FAA's professional bureaucracy.

Underscoring the deceptive nature of the "remedial" word game is the fact that over two decades ago the FAA General Counsel himself undercut any pretension to legitimacy the term might have had. Concerned about problems he felt were created by CAB's proposed new set of procedural regulations,[204] rewritten because of the 1958 redistribution of enforcement power, Daggett H. Howard told FAA's first administrator, Elwood "Pete" Quesada:

> Throughout the rules the Board speaks in terms of "remedial" orders. *This, too, is a discarded concept.* There is no provision in the Act which would prohibit the Administrator from taking certificate action for disciplinary, as well as a remedial, reason, provided he makes the appropriate findings [in the public interest] as required by section 609. This emphasis by the Board on "remedial" orders has serious connotations. For example, it would be quite proper for the Administrator to suspend a pilot certificate *simply as punishment* as a deterrent to the pilot and others. The Board, under the rules, could reverse the Administrator's order merely on the basis the action is not "remedial."[205]

The likely source of Howard's determination that "remedial" was a "discarded concept" was the CAB's brief in *Lee v. Civil Aeronautics Board*.[206] There, the CAA administrator asked the court to overturn a CAB order of dismissal so that the prosecution of two airline pilots for alleged safety violations could proceed. The pilots were involved in a near miss with another airliner for which there was some evidence they

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sense is expounded by FAA lawyers came to me from an FAA source. Attached to a letter to Senator John Tower of Texas from FAA official Henry N. Stewart, dated Aug. 27, 1979, APA-3 File No. 2150, is a copy of a constituent's letter to the Senator. Complaining that a suspension "has essentially put me out of business for two months," this helicopter pilot went on to tell the Senator:

> During my informal conference with Mr. Bachman (the F.A.A. Attorney) Mr. Andrus [this pilot's attorney] used the word "punishment" in reference to any potential action on the F.A.A.'s part. Mr. Bachman bristled at the use of this term and stated, "The F.A.A. does not punish people and it's [sic] sole interest is aviation safety.["] In retort, if a two month unpaid vacation isn't a punishment then I'm missing the meaning of the word.

[198] 248 F.2d at 761-62.

[199] 1980 Handbook, *supra* note 17, ¶ 205 b(4), at 15.

[200] 1968 Handbook, *supra* note 8, ¶ 9 d, at 10.

[201] 1970 Handbook, *supra* note 119, ¶ 200, at 141. Two more examples come to mind. In their official publication, Commerce Department aviation officials, in recapping enforcement activity, noted that "[t]he penalties assessed for the 345 violations included 28 civil penalties, 48 reprimands, 75 suspensions, 15 revocations, 6 denials of license, and 62 dismissals of charges." 5 DEP'T COM. AIR COM. BULL. 108 (Aug. 15, 1933). Then again, discussing an aircraft accident, they noted: "The penalty exacted of this pilot by the Bureau of Air Commerce was a suspension of license." 7 *id.* at 185 (Feb. 15, 1936).

[202] FAA Manual of Procedure 22, ¶ 0 (1960).

[203] *Id.* at foreword.

[204] 24 Fed. Reg. 99 (proposed Jan. 6, 1959).

[205] Memorandum dated Feb. 4, 1959 (emphasis added).

[206] 225 F.2d 950 (D.C. Cir. 1955).

were responsible. The CAB, in a hearing conducted pursuant to its separate accident investigation powers, determined that they had to grant the pilots immunity from prosecution in order to acquire their testimony. CAA appealed and argued that the pilots were not entitled to immunity. The court dismissed the Administrator for lack of standing.

CAB strenuously argued during these proceedings that suspensions are a "penalty" which would require that immunity be granted:

> This purpose marks the suspensions as punitive in the legal sense, and as a penalty . . . . The Board did not exceed its authority in differentiating between punitive suspensions on the one hand and remedial suspensions and revocations on the other. [T]he fact that law enforcement is in the interest of the public cannot serve to convert punitive action to remedial action. [A suspension] meets all of the tests of a penalty . . . . While it may be said to be remedial in the sense that it promotes safety by discouraging violations, the same can be said concerning the effect of any criminal prosecution.[207]

Yet the lawyers who wrote this brief, two years later in *Wilson*, told the same court that the Board was really only interested in the remedial purpose of promoting air safety, certainly not in punishing pilots.

The Board's desire to defend its immunity policies in *Lee* was understandable, given that the testimony of pilots was crucial to its investigations in those pre-cockpit recorder days. Yet by taking a contradictory position in *Wilson*, the CAB revealed that protection of the Agency's best interests, not the public's, was foremost in their minds.

VII. CONCLUSION

In 1980, in the face of a fifty-four year old law stating that *any* pilot or mechanic who violates *any* FAA regulation "shall be subject to" a civil money fine with right to jury trial, the Agency's Office of Chief Counsel prepared Congressional testimony for Administrator Langhorne Bond that said:

> [W]e as a rule take certificate action in the form of a suspension for violation of operational rules. However, we do give consideration to a person's livelihood and the need for his services as for example use of an aircraft in a person's business or farm operation, company pilots, air taxi pilots and so forth. *These people are often given civil penalties* so that there is no undue financial burden by taking their certificates away from them.[208]

Like so much that FAA officials say about enforcement, this is grossly misleading, and it exposes the insurmountable contradictions of the two-track program. Except for airline pilot cases, FAA's own statistics show that the *majority* of professionals—commuter, air-taxi, corporate pilots

and the like—are penalized by *suspension*, not civil penalties.[209]

The institution of punitive suspensions and revocations by government aviation officials in 1926, and their continued use and coverup, constitutes one of the great abuses of power in the history of the federal bureaucracy. One recent case can serve as a vivid example of the human impact of this abuse.[210] A helicopter pilot, instructed by the station's news director to get pre-game shots of the crowd filling the Denver football stadium, took the TV cameraman in closer, lower and slower than FAA officials thought was proper in the event of engine failure. In what was clearly a response to the notoriety of the incident (several in the crowd felt threatened and complained), rather than a justifiable belief that the pilot would do this again, FAA officials issued an emergency order suspending the pilot for *six* months. Although there was no accident or any harm done, the ALJ routinely upheld the FAA.[211]

Caught short by the emergency order, without a job and unable to afford counsel, the airman did not perfect his appeal properly. With this, his first violation in 2,000 hours of combat and civilian flying, this young family man lost his job because his sympathetic employer could not keep it open that long and lost half his modest annual salary. Afterwards, in order to take the only job he could find, he had to uproot his family from the city where he and his wife had settled and move to another state. Ironically, the regulation he allegedly violated leaves much to the judgment of the pilot.[212] The FAA lawyer who prosecuted the case, when interviewed later, agreed that had the man been just 100 feet further from the side of the stadium, and been flying ten miles an hour faster, the case would have been far more difficult to prove.[213] A reasonable person, had he learned that this young man paid a civil penalty of $500, even $250, would have thought that sufficient and justice well served.

Congress as well bears responsibility for these injustices. Never has there been any planned, regular Congressional oversight of federal aviation enforcement. Congress should set up and fund a commission of prominent citizens, including constitutional and administrative law experts, with its own staff, to completely overhaul the FAA enforcement program. This body must hold nationwide hearings so that it will understand the depth and breadth of the problems that need rectifying, and to maximize public participation. Any revised program should be patterned after auto traffic systems of justice, providing in most cases for fixed penalties and for forfeiture of collateral. Then it can concentrate on repeat offenders and serious offenses. Safety violation cases, when contested, should be heard by federal magistrates. Congress never intended that questions of "guilt or innocence" be heard by a panel, like NTSB, which has direct responsibilities for air-safety. That's like having the policeman serve as traffic judge.

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[207] Brief for Respondent at 7, 24, 28, *Lee*. Briefs may be found at Vol. 1041, *Records and Briefs, United States Court of Appeals, D.C.*, of the D.C. Bar Association.

[208] BRIEFING BOOK, *supra* note 25, at 1 (emphasis added).

[209] ENFORCEMENT REPORT, *supra* note 1, at 1, 6.

[210] Jones, No. SE-4889 (N.T.S.B. Dec. 8, 1980).

[211] *Id.*

[212] 14 C.F.R. § 91.79(a), (d) (1983) (basically that he was operating at an altitude and at less than the minimum airspeed in which an autorotative landing could be safely executed in the event of engine failure).

[213] Telephone interview with Allan Horowitz, FAA lawyer—Rocky Mountain Region (Dec. 17, 1980). Horowitz also commented: "If we had only civil penalties, we wouldn't have an enforcement system."

Certainly, there is nothing unfair about making air-safety violations minor misdemeanors (and in some cases more serious crimes), so long as FAA's enforcement program is completely overhauled and Congress makes it clear that most violations are no different than speeding in a national park. It will not be an easy or inexpensive task to revamp the enforcement system so that violations are fairly and equitably handled, but it is one that justice demands.

The Arizona Daily Star
Tucson, Wednesday, June 12, 1985

FAA declares Continental a safe airline

WASHINGTON (AP) — The Federal Aviation Administration declared Continental Airlines a safe airline yesterday, although it said a detailed inspection of the carrier disclosed sloppy record-keeping and 20 safety violations.

The agency said the findings should put to rest allegations of dozens of serious safety violations at Continental, many of them brought during the past year by the Air Line Pilots Association, whose members are on strike against the carrier.

"They're a safe airline and they're equipped and staffed to continue to be a safe airline. . . . It was sloppy record-keeping," said William J. Ayton, who supervised a 24-member team of FAA inspectors that examined Continental's operations.

The inspection covered six weeks beginning last March and included examination of Continental's records, pilot training, ground and maintenance facilities and dozens of en route inspections.

But the FAA finding was challenged immediately by the pilots union, whose members struck Continental in September 1983 after the airline reorganized under the bankruptcy laws and nullified its labor contracts.

Since then, the airline has rapidly rebuilt its operations, using other pilots.

"We think it's a continued cover-up on the part of the FAA," Harold Marthinsen, the union's director of accident investigation, told reporters. He accused the FAA of ignoring various training and procedural violations at Continental during the past 20 months.

Clark Onstad, a Continental vice president, said the FAA findings should "put to rest" concerns about safety at Continental, which he said all along has been following regulations.

FAA officials, briefing reporters, called the airline's record on par with that of other carriers and said Continental "continues to have an adequate level of safety."

The 20 violations were in addition to nearly 100 "discrepancies" in which inspectors found fault but no violation of regulations, the FAA officials said. Many of them might be found at other airlines if they underwent a similar inspection, the officials said.

"Continental probably is one of the most inspected airlines in the industry," said Homer McClure, head of the FAA's Western Region, which has primary responsibility for the airline.

Among the violations found were that some pilots worked too many hours in a row, training manuals were not always current, some equipment was not properly checked to assure it was functioning properly and some flights did not have required equipment.

Inspectors said there also were at least five incidents where flight crews followed improper procedures, although the only violation cited specifically was one in which a crew began a flight checklist at the wrong time.

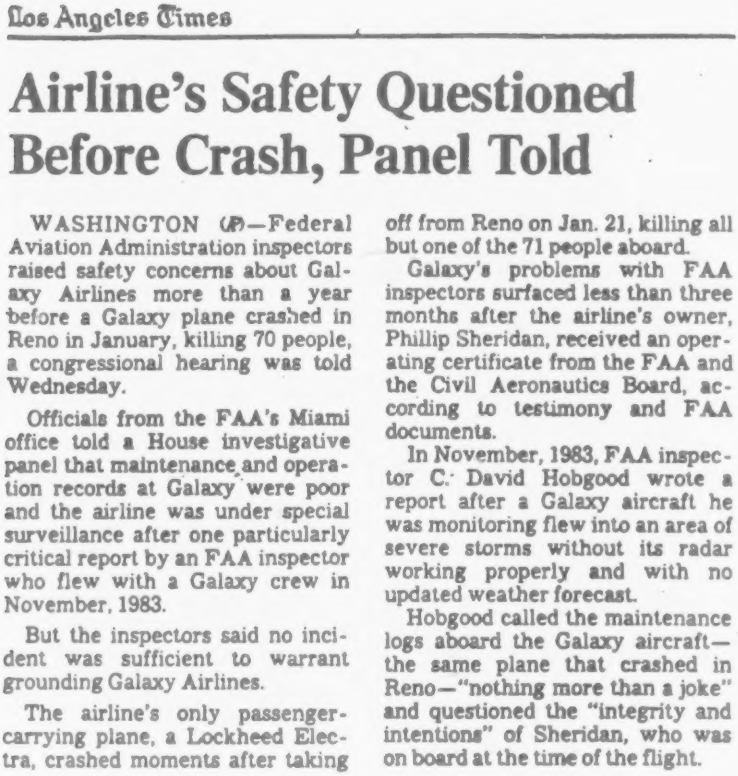
Continental's biggest problem was record-keeping, including failure to keep proper track of qualification and training records of pilots and senior pilots assigned to check out new employees, the FAA said.

"They were doing the job but not properly recording it," said Ayton. He attributed some of the airline's problems to the loss of administrative personnel during its reorganization and rapid rebuilding program.

The pilots union has charged that pilots were not properly trained after being hired to replace striking employees and that some of the pilots assigned to check out the new pilots were not properly screened. It also has claimed that some Continental planes were overweight because of improper loading procedures.

Ayton said none of these accusations was found to be true and suggested that some stemmed from "disgruntled employees" at the airline.

EXHIBIT I



Los Angeles Times

Airline's Safety Questioned Before Crash, Panel Told

WASHINGTON (AP)—Federal Aviation Administration inspectors raised safety concerns about Galaxy Airlines more than a year before a Galaxy plane crashed in Reno in January, killing 70 people, a congressional hearing was told Wednesday.

Officials from the FAA's Miami office told a House investigative panel that maintenance and operation records at Galaxy were poor and the airline was under special surveillance after one particularly critical report by an FAA inspector who flew with a Galaxy crew in November, 1983.

But the inspectors said no incident was sufficient to warrant grounding Galaxy Airlines.

The airline's only passenger-carrying plane, a Lockheed Electra, crashed moments after taking off from Reno on Jan. 21, killing all but one of the 71 people aboard.

Galaxy's problems with FAA inspectors surfaced less than three months after the airline's owner, Phillip Sheridan, received an operating certificate from the FAA and the Civil Aeronautics Board, according to testimony and FAA documents.

In November, 1983, FAA inspector C. David Hobgood wrote a report after a Galaxy aircraft he was monitoring flew into an area of severe storms without its radar working properly and with no updated weather forecast.

Hobgood called the maintenance logs aboard the Galaxy aircraft—the same plane that crashed in Reno—"nothing more than a joke" and questioned the "integrity and intentions" of Sheridan, who was on board at the time of the flight.

EXHIBIT J

American Agrees to $1.5-Million Settlement

By Carole A. Shifrin

Washington—American Airlines has paid $1.5 million in civil penalties to settle charges of maintenance-related violations of the Federal Aviation Regulations.

The alleged violations, uncovered during a special intensive review by the Federal Aviation Administration, involved maintenance performance, improper postponement of maintenance and defects in procedures for monitoring performance and quality control. Agency papers indicate that maintenance was deferred on a number of items that pilots and other employees had complained about.

The special FAA inspection followed a series of safety-related incidents that also caused Robert L. Crandall, American's chairman, president and chief executive officer, to institute internal evaluation of the airline's maintenance and safety procedures (AW&ST Sept. 2, p. 31; July 8, p. 29).

FAA Administrator Donald D. Engen said the FAA inspection had confirmed the essential integrity and soundness of American's maintenance and airworthiness functions, and said that the airline had taken immediate steps to correct deficiencies that were identified. But he suggested that American officials would agree with his analysis that American "expanded rapidly and, in expanding, they needed to bring the maintenance philosophy along a little more aggressively."

'Sending a Message'

Engen said American was a "fine and safe airline," but that the FAA was sending a message to carriers that it meant business. Engen said he did not see any connection between airline deregulation and any alleged slide in maintenance procedures by the carriers. Delayed maintenance "has always been out there," he said, adding that the FAA inspectious were part of the agency's job and not related to deregulation.

The American inspection was one of an ongoing series of similar in-depth examinations of the maintenance procedures of the major airlines.

The FAA conducted a safety audit of U.S. airlines in 1984 and disciplined 16 carriers as a result of the audit (AW&ST Dec. 17, 1984, p. 27).

Engen said the principal operations inspector, who had been at American, has been reassigned. There was no culpability in the inspector's actions and he was not fired, Engen said. But he said that he plans to move more principal operations inspectors. "When people get comfortable with people, it's not a good idea," he said.

American's and the FAA's inspections were begun after the carrier had a string of safety-related incidents, including incidents leading to the discovery that the airline was using phenolic pulleys in certain places on the wing instead of the required aluminum pulleys; an aborted takeoff of a McDonnell Douglas DC-10 at San Juan, Puerto Rico, following two blown tires; an engine falling off a Boeing 727, traced to a leaking toilet, and others.

American said the results of the FAA audit and the fact that the FAA had assessed fines of $1.5 million were disappointing. But it said the audit "did reveal several deficiencies" in compliance with FAA regulations that the carrier promptly corrected.

Phenolic Pulleys

In one of six letters to American detailing the alleged maintenance violations, the FAA said the airline had been using phenolic pulleys on the right wing's No. 3 leading-edge slat retract instead of an aluminum pulley.

On one aircraft, the use of the wrong part resulted in the separation of the right-wing outboard leading-edge slat from the aircraft during a flight at Dallas. An investigation showed that the pulley had broken in three places, causing the slat retract cable to loosen and break. The pulley was replaced by another phenolic pulley and was operated in that condition for 22 flights.

Two other aircraft with the phenolic pulleys operated 496 and 647 flights, respectively. The phenolic part on one aircraft was discovered after the right wing No. 3 slat was found drooping during an inspection in Toronto following failure of the right wing retract pulley.

The FAA said the carrier was subject to a maximum civil penalty of almost $1.2 million for violations related to the pulleys, but it had been willing to accept an offer of $375,000 in compromise. Crandall has attributed the use of the phenolic parts to duplication of parts numbers for pulleys made of aluminum.

Federal Express Caravans

Washington—Federal Express has ordered another 79 Cessna Aircraft Caravan 1s, including 70 stretched versions of the single-engine turboprop, to expand feeder operations in its delivery service.

The airline received the first of its Model 208A Caravan 1s in February, and has 23 in operation. The final seven from the original order will be delivered by year end.

Another nine Caravan 1s without a fuselage stretch will be delivered to Federal Express through 1986. The 70 modified Caravans are scheduled to be delivered at a three-monthly rate beginning in October, 1986.

The new Caravans delivered next year will incorporate a 4-ft. fuselage and cargo-pod stretch, and maximum weight will grow from 8,000 to 8,700 lb. Another 90 Caravan 208As on option by Federal Express would begin deliveries in 1988.

Another FAA letter recounted a "B" check inspection in February of a McDonnell Douglas MD-80, during which the carrier failed to install a retainer lock pin in No. 3 wheel when changing the main landing gear tire.

During the third flight after maintenance, while taxiing, the No. 3 tire and wheel case came off the axle, damaging and causing permanent deformation of the left inboard flap. The tire change was not performed in accordance with American's maintenance practices and the manufacturers' maintenance manual, the FAA said. In addition, American failed to submit a mechanical reliability report within the time specified following wheel loss and flap damage.

In one case, an FAA inspector was not able to perform an en route inspection because of a broken jumpseat. Although the aircraft log noted that the cockpit jumpseat of the MD-80 could not be lowered because the latch knob broke off, the carrier operated seven more flights before repair.

Other Allegations

Other alleged violations outlined in letters included:

- Failure to comply with requirements of an airworthiness directive applicable to inspection of forward lavatory and linen waste receptacle door of an MD-80.
- Operation of an MD-80 with public address megaphone button stuck—following inspection and deferral of maintenance—which did not allow use of the interphone system, a required item of equipment. The carrier operated four more flights before replacing the public address amplifier. Another MD-80 was operated in 28 flights with the interphone from the left aft service door inoperative.
- An MD-80 takeoff warning horn on the right throttle was inoperative. On another MD-80, right galley to cockpit chime was not operative. On another, the forward cabin to cockpit call button was stuck in the "on" position, and the circuit breaker for the chimes was pulled.

The discrepancy had been cleared by deactivating the forward attendance cabin to cockpit call switch by maintenance personnel.

The $1.5-million fine settles all audit-related items as well as others that had been under discussion between American and the FAA prior to the audit, such as the proposed $375,000 fine for use of phenolic pulleys. ☐

EXHIBIT K

Mr. **Pietrasik**. Mr. Chairman, if I may, just one more addition and then I think we all could adjourn, unless you would like to ask some additional questions.

Subsequent to our investigation we approached New York TRACON with the following question: Why is it that your controller did not notify the Coast Guard until an hour and a half after the accident? And that goes back to the safety issue. Is the FAA here, really, for safety? It's the attitude of the FAA. Why did they fail to locate—to specify the position of that aircraft? It's on tape. I've listened to it. The aircraft went down one-half mile from the end of the runway. The primary target—the aircraft was equipped with a transponder. One-half mile from the end of the runway in 12 feet of water. Why were these people stranded there?

Mr. Kelly, who was the supervisor of New York TRACON at that time, said, "FAA is not responsible for search and rescue."

Mr. **Mineta**. When you say that they're not responsible, how would you interpret that?

Mr. **Pietrasik**. I would interpret that as an attitude problem at the FAA. I'm not sure whether they are or not, what the legislation is, what the FAR's effectively say, whether they are or not. FAA, as far as I know, is here to promote aviation, and they should remain responsible for just about anything there is in aviation.

The other issue that was raised a little bit earlier today was, should there be this cross between promoting aviation and safety? I believe there should be, only because of two things. One is this attitude problem which has developed.

They are responsible for search and rescue. They are responsible until that passenger deplanes. That's the FAA responsibility, I believe. To hear such a statement as, "FAA TRACON is not responsible for search and rescue" is foolhardy.

Mr. **Mineta**. All right. Very good.

Thank you very much, Mr. Pietrasik, for taking the time to present your paper, and Mr. Crete, for your statement as well.

Mr. **Pietrasik**. Thank you, Mr. Chairman.

Mr. **Mineta**. Okay. Is there anything further to come before this subcommittee?

[No response.]

Mr. **Mineta**. If not, we stand adjourned.

[Whereupon, at 7:23 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

AVIATION SAFETY COMMISSION

VOLUME I: FINAL REPORT AND RECOMMENDATIONS

April 1988

AVIATION SAFETY COMMISSION

• Suite 1115 • 1725 I Street, N.W. • Washington, D.C. 20006 • (202) 634-4860

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Joseph P. Kalt
Michael E. Levine
Russell W. Meyer, Jr.
John E. Robson
Thomas W. Wathen

April 18, 1988

President Ronald W. Reagan
The White House
Washington, D.C.

Dear Mr. President:

We are pleased to present to you the Report of the Aviation Safety Commission. This Commission was created under P.L. 99-591, the Aviation Safety Commission Act of 1986 and requested to make its study and report back to the President and the Congress no later than April 18, 1988.

During the past ten months, the Commission has conducted an intensive inquiry into air safety. We have gathered information from a broad range of aviation specialists, consumer groups, and industry leaders. As our mandate required, we have looked carefully at the organization and function of the Federal Aviation Administration to determine the means by which it can most effectively and efficiently perform its responsibilities.

After many months of deliberations we have unanimously agreed on a set of recommendations which we believe will serve to ensure the continued safety of the Nation's aviation system.

We are privileged to submit these recommendations herewith.

Sincerely,

John M. Albertine

John M. Albertine
Chairman

S. John Byington

J. P. Kalt

Joseph P. Kalt

Michael E. Levine

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April 18, 1988

Honorable Robert C. Byrd
Honorable Robert Dole
Honorable Jim Wright
Honorable Robert H. Michel
United States Congress
Washington, D.C.

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Mr. Albertine is the Vice-Chairman of Farley Industries.

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Mr. Byington is a partner at Pillsbury, Madison and Sutro.

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Mr. Levine is the General George Rogers Clark Professor of Management at the Yale School of Organization and Management.

Russell W. Meyer, Jr.
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EXECUTIVE SUMMARY

After months of study, hearings, meetings around the country, and staff reports, the Aviation Safety Commission unanimously concludes that the nation's air transportation system is safe. However, safety is being maintained to an increasing extent through delays and other inconveniences.

Air transportation has changed during the past decade. Economic regulations that had shaped the industry since the 1920s were replaced by airline deregulation. The resulting increased competition has lowered fares, expanded service, and brought air travel to millions who had not previously been able to afford to fly. It has also made the FAA's job much more difficult.

The Aviation Safety Commission concludes that the present safety regulatory structure designed to ensure aviation safety is inadequate to deal with future growth and technological change. Now is the time to equip the regulatory system to accommodate changes in the numbers and kinds of aircraft, to take advantage of new technology in aircraft design and manufacture, to respond to heightened sensitivity on the part of the public to aviation safety, and to act on the backlog of potentially worthwhile safety improvements that have been languishing because of diffused authority and accountability. In short, *now* is the time for decisive action by Congress and the Executive Branch.

The Aviation Safety Commission believes that the Federal government must continue to play the central role in ensuring safe operation of the U.S. aviation system. We also share the common perception that, while the system is safe for now, the present governmental structure is not working effectively enough to ensure its safety in the future. Therefore, we agree unanimously that a major structural overhaul is essential. We believe that the regulatory process must remain governmental in character and should not be taken out of the Federal government or removed from public accountability.

The Commission's recommendations address in a constructive way all of the issues which have been raised in the current debate and reflect the input we have received from the Secretary of Transportation, the FAA, former FAA Administrators, Members of Congress, the NTSB, consumers, and industry experts.

Specifically, the Aviation Safety Commission recommends that FAA be transferred from the Department of Transportation and be established as a user-funded authority which is:

- overseen by a nine-member Board of Governors appointed by the President and confirmed by the Senate;
- managed by an Administrator who is appointed and confirmed for a term of seven years;
- subject to agency-wide regulatory oversight by a Director of Aviation Safety who is appointed and confirmed for a term of seven years;

- freed from the constraints of the federal civil service and procurement systems.

The Director of Aviation Safety has the authority to initiate rulemaking as well as disapprove regulations promulgated by the Administrator, and also has the authority to enforce compliance by the Administrator of existing rules and regulations. Decisions by the Administrator and the Director of Aviation Safety are appealable to a Safety Committee of the Board of Governors composed of the Administrator, the Director of Aviation Safety, the Secretary of Transportation, the Secretary of Defense and a public member, and hence are not subjected to OMB review.

The Aviation Safety Commission also recommends the following agenda for improving aviation safety:

Safety Inspection Programs

- national rather than regional certification programs for major and national jet carriers;
- establishment of a nationwide inspection program for all size carriers with a combination of regular, in-depth, and surprise inspections;
- separation of certification and surveillance functions in the new Authority;
- priority inspections for carriers undergoing major change;
- increasing the inspector workforce to accommodate these changes.

Regional Airline Safety

- reducing differences in equipment standards between regional and national carriers, with all aircraft providing scheduled service being required eventually to meet Air Transport Category Aircraft (Part 25) standards;
- reducing differences in operating practices between regional and national carriers, with all carriers eventually being required to meet Part 121 operations requirements.

General Aviation in the Air Traffic Control System

- requiring all aircraft to be equipped with a Mode C transponder in buffer zones around all large, medium, and small hubs;
- stronger enforcement against buffer zone violators with a separate radar position dedicated to tracking and notifying violators in each buffer zone.

FAA Rulemaking

- process must be streamlined and restructured to include clear and unambiguous responsibility and accountability.

Airport Safety and Capacity

- base airport certification on passenger volume rather than type of equipment;
- review of existing policies and requirements with particular emphasis on signage, directional indicators, and taxiway and intersection markings.

Use of Operations Research

- need to enhance operations research capabilities for better utilization in problem solving.

SECTION I—AVIATION SAFETY AND AIRLINE DEREGULATION

The air transportation system has changed dramatically over the past 60 years. Throughout the first 50 of these years, the most significant changes were technological, as the airline industry progressed from piston-engine, propeller aircraft to widebodied fanjet aircraft. For the last ten years, the most important changes have been institutional, as the extensive system of government economic regulation that had shaped the industry since 1938 was dismantled by the Airline Deregulation Act of 1978, leaving market forces in its place.

These market forces led to an expansion in the number of airlines immediately after deregulation and then, more recently, to consolidation through an unprecedented wave of mergers and acquisitions. Route systems have changed, with routes radiating from approximately 25 connection centers or "hubs" replacing the linear routes that were a vestige of the limited nonstop range of the early propeller aircraft. For many smaller cities, infrequent scheduled service in jet aircraft has been replaced by more frequent service in smaller commuter aircraft.

Competition has been intense since deregulation. Fares have decreased in most markets, with some discount fares dropping to remarkably low levels. Traffic has expanded rapidly in response to increased service and reduced fares. In the process, aircraft fleet size and operations have grown as well. Competition, coupled with rapid growth, put pressure on the airlines by forcing them simultaneously to grow, to adapt their route systems and services to the free marketplace, to make their labor arrangements more efficient, to accommodate mergers, and, in many cases, to do all this while changing management, as managers whose skills were attuned to marketing and cost control replaced those whose focus had been operating in a regulated economic environment.

Over the years preceding deregulation, the airlines achieved, with the help of the Civil Aeronautics Authority, Civil Aeronautics Board, Federal Aviation Administration, and the Department of Transportation, an outstanding record of improving safety. The airlines have continued this remarkable record in the decade since deregulation, while experiencing rapid growth and turbulent change.

Yet, even as this record has been compiled, the public, the Congress, and the Administration have expressed heightened concern over aviation safety. Well-publicized aviation accidents in the past three years have fueled these concerns: the Delta Airlines crash in Dallas-Fort Worth, the crash of a military charter in Gander, Newfoundland, the Aeromexico midair collision with a general aviation aircraft in the Los Angeles area, and, most recently, accidents involving Northwest Airlines in Detroit and Continental Airlines in Denver. As a result, some industry observers contend that safety in the air transportation system has deteriorated.

Indeed, the very existence of this Commission reflects this concern. The public's uneasiness stems in part from the differences between the institutional changes of the last ten years and the major technological changes that preceded them. This difference—change driven by dynamic economic and commercial forces rather than technical or regulatory factors—is one of the areas on which the Commission has focused. Beyond this, the very magnitude of the growth and change has added a new dimension of concern for the ability of the nation's air system to cope with this dynamic environment. Finally, changes in governmental and budgetary processes have raised the question of whether the existing aviation institutions are properly structured to continue the current high level of system safety over the coming decades.

In the remainder of this section, the impacts of deregulation on the airline industry and traveling public are reviewed. The safety record is examined in detail and the effect of deregulation on air safety is carefully considered, both nationwide and specifically on those communities whose air service is provided by commuter airlines. The widely-discussed question of whether the "margin of safety" has changed is also addressed, in an effort to clarify a public discussion which has not always been clearly focused. Finally, the question of whether re-regulation of fares and entry could be expected to enhance safety is discussed.

In Section II, the implications of deregulation, growth, and other forces on the FAA are considered. Major changes in the structure of government supervision of aviation safety are recommended; changes which are designed to ensure safe operations into the next century. Finally, in Section III, the effects of a dynamic environment on airline inspections, FAA regulatory activity, general aviation, the air traffic control system, and other areas which have generated public concern are explored and recommendations to improve safety are made.

Overview of the Safety Record

While there seems to be a widespread perception of a growing safety problem, a review of the post-deregulation accident record reveals a much different picture. Figure 1 shows the historical profile of accidents and passenger fatalities for jet carriers, while figure 2 shows accidents and passenger fatalities for commuter airlines. The most striking features of the figures are that the safety record has continued to be excellent following deregulation and that there remains a substantial variation in the number of fatalities from year to year. This strong safety performance has come in the context of rapid industry growth in passenger enplanements and aircraft departures, as shown in figures 3 and 4. The number of passengers has grown from just under 254 million in 1978 to over 400 million in 1987. Total aircraft departures have increased 29 percent over the same period.

Figure 1
Aircraft Accidents
and Passenger Fatalitites
Part 121 Operators

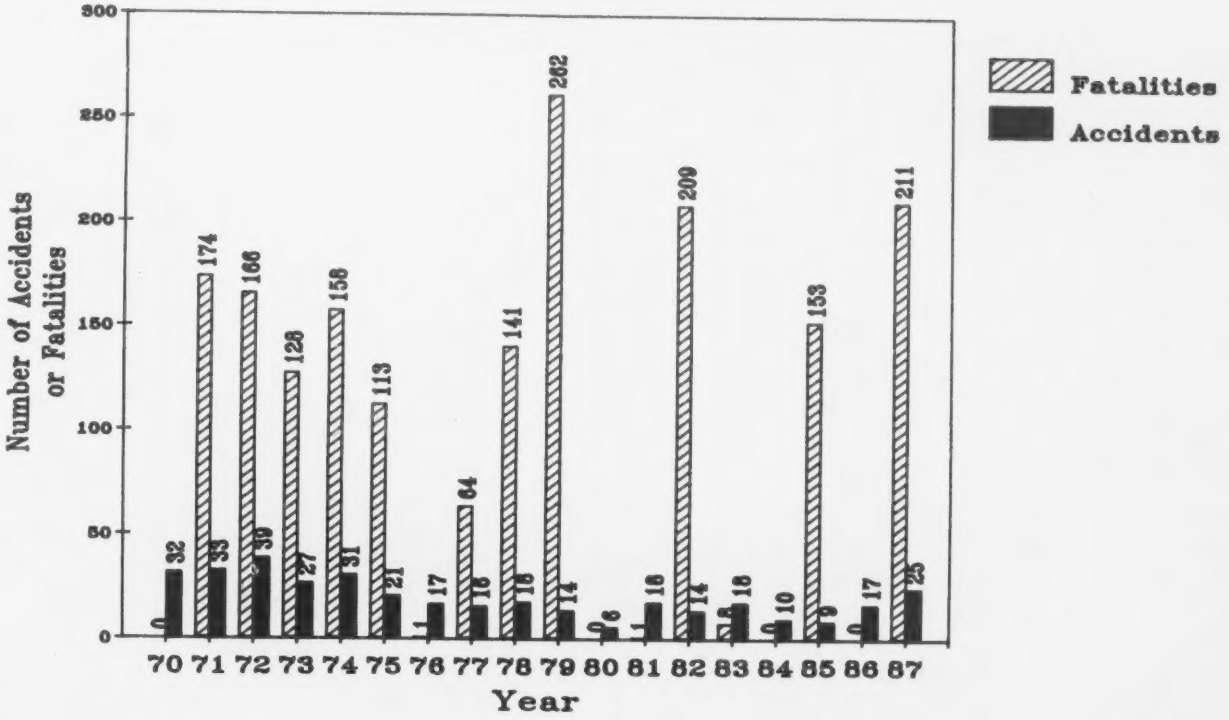


Figure 2
Aircraft Accidents
and Passenger Fatalities
Part 135

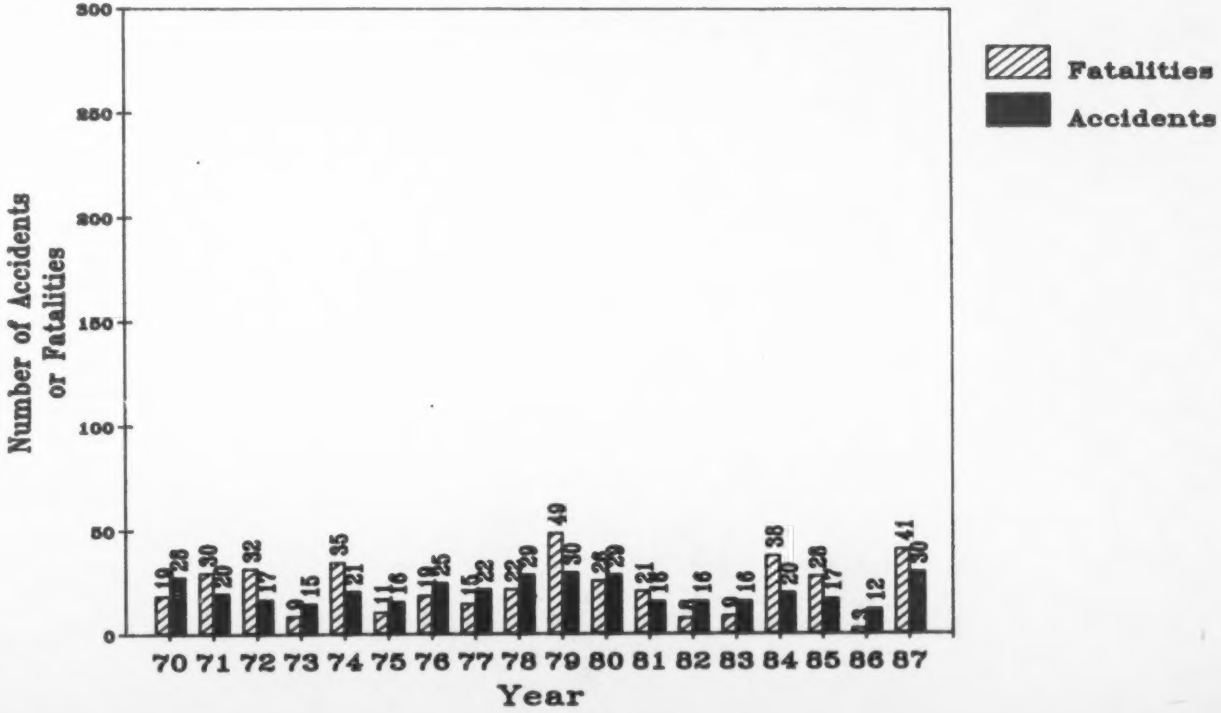


Figure 3
Revenue Passenger Enplanements
Domestic Scheduled Service

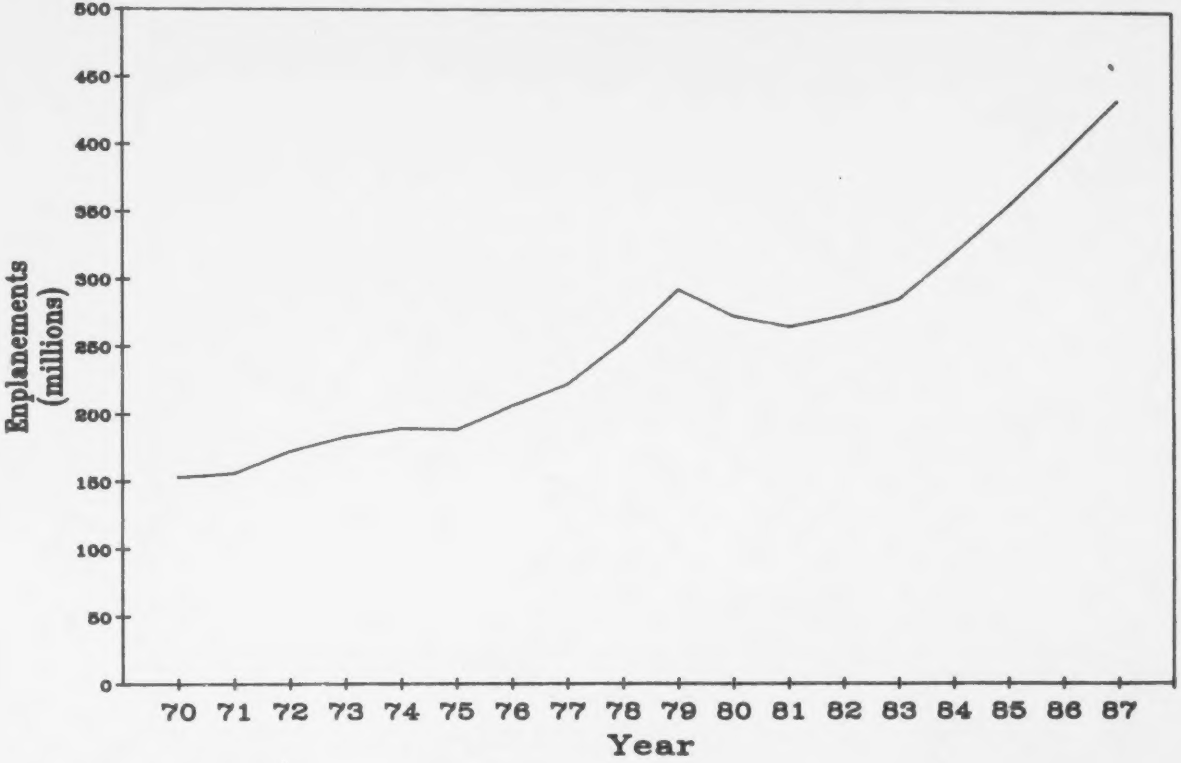
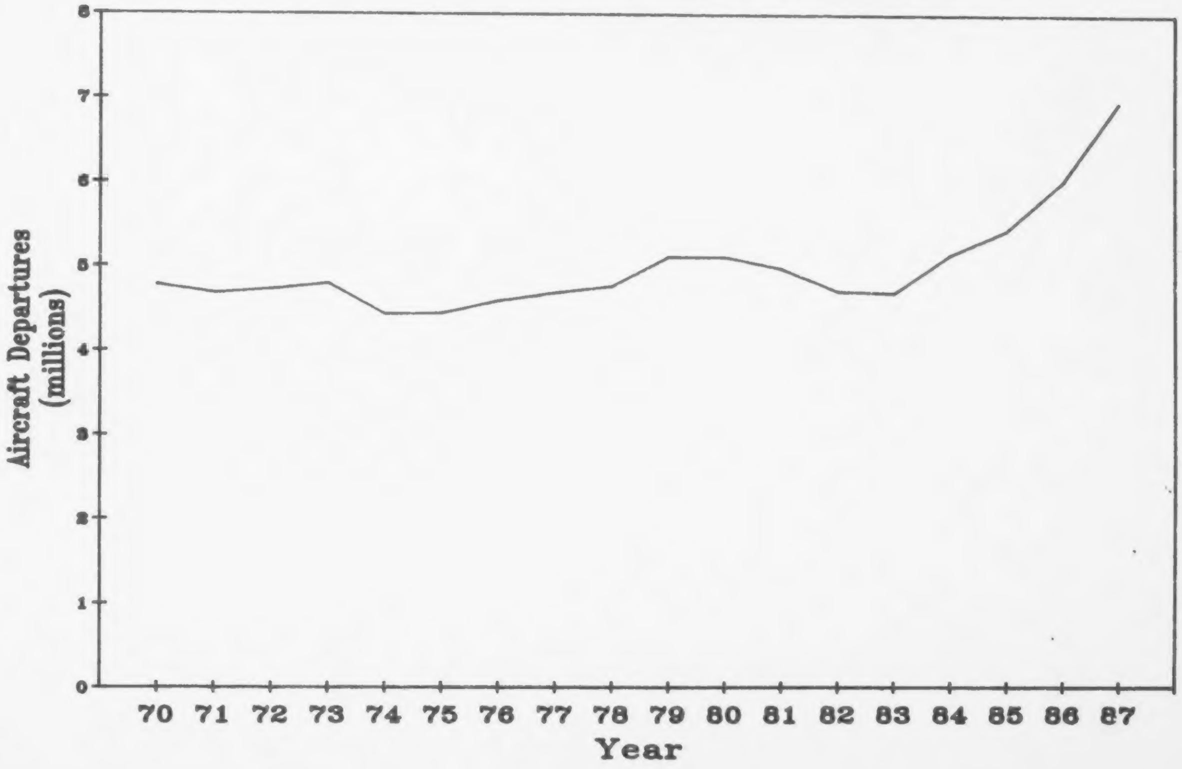


Figure 4
Aircraft Departures
Domestic Scheduled Service



Despite a 26.5 percent increase in aircraft departures since 1978, the number of airline accidents (including jet and commuter carriers) fell from a total of 427 in the 1970 to 1978 period to 317 between 1979 and 1987. Similarly, despite a 55 percent increase in passenger enplanements, the number of passenger fatalities decreased from 1137 in 1970 to 1978 to 1067 in 1979 to 1987. The post-deregulation rate for jet carrier accidents was 55 percent lower in the 1979 to 1987 period than it had been in 1970 to 1978. Indeed, the rates for both fatal and non-fatal accidents, for the number of passengers killed, and for the number of passengers injured all were much lower in the post-deregulation period. Measured in terms of rates (per million departures for accidents and per million enplanements for fatalities and injuries):

- Fatal accidents were down 51 percent.
- Serious injury accidents were down 56 percent.
- Minor accidents were down 55 percent.
- Passenger fatalities were down 45 percent.
- Serious passenger injuries were down 84 percent.

The post-deregulation record among commuter carriers exhibited much the same pattern, with passenger fatality rates dropping 42 percent and passenger injury rates dropping 49 percent.

Deregulation and Safety

While the record on aviation accidents is one of improvement in both the pre-deregulation and post-deregulation periods, some argue that accident statistics may not reveal a subtle deterioration of the safety of the system. Aviation accidents are rare events; each has unique elements that make patterns difficult to detect. An increase in the underlying risk of airline travel may not show up in a discernibly greater number of accidents for some time. Similarly, an apparent increase in the number of accidents may not signal a long-run change in the risk of air travel. But the aviation system has been designed with an extra "margin of safety" so that human mistakes or equipment failures need not inevitably result in accidents or fatalities. Some are concerned that this margin of safety may have eroded so that the system may have gradually become less safe. Eventually, they argue, a reduced margin of safety will result in more accidents.

Much of this concern is linked to the advent of airline deregulation. As the Congressional Research Service stated in a January 1988 report:

> Many of the service and safety problems being experienced in the U.S. air transportation system are being linked either directly or indirectly to the deregulation of the airline industry in 1978. . . . Taken as a whole, the result appears to be a gradual reduction in the level of safety that had been achieved prior to deregulation.

In evaluating these claims, it is important to understand how deregulation has affected the airline industry, and in turn look at how these effects are thought by some to have made air travel less safe.

Deregulation's Impacts on the Airline Industry

For over 50 years (1926 through 1978) the CAB and its regulatory predecessors supervised the economic regulation of the commercial airline industry. Overall, the CAB's basic guiding principles seemed to be equalizing the size of companies and avoiding bankruptcies to maintain industry stability. The CAB used its authority over entry, exit, route awards, fares, and mergers to protect the financial viability of even the weakest carriers. Because the CAB controlled fares closely, airline competition was based on service, usually in the form of amenities and frequent scheduling, rather than price.

In 1978, after two years of limited "administrative deregulation," the Airline Deregulation Act launched the airline industry into an era of increased competition, removing most of the economic regulation imposed by the previous regulatory laws. The resulting flexibility in route entry and exit and in fare setting has promoted open competition among carriers in the industry, forcing the airlines to pay more attention to cost control, productivity, and marketing.

Route entry deregulation allowed carriers to match aircraft more closely to markets, resulting in better equipment utilization, higher load factors, and improved productivity. Because of these productivity and cost improvements in an era of heightened price competition, fares have been lower on average than they would have been under continued regulation. Fare reductions have been most dramatic for long flights between major cities. Even on the shorter flights, fares as a percentage of costs have remained roughly the same after deregulation as before, despite reductions in government subsidies for service to small cities. The average fares paid by passengers have fallen, mainly due to the extension of discount fares to over 80 percent of all markets, with ready acceptance of these fares by the public. Over three-fourths of all passengers fly on discount fares today.

Hub and spoke route networks have long been a feature of domestic airline route strategies, but regulation hampered the development of such networks prior to 1978. All of the major carriers undertook some degree of hub strengthening following deregulation. The main advantage of such a system is that by collecting passengers bound for all the spoke cities, markets in which fewer people wish to travel can be served more frequently, and usually more cheaply, than service by direct flights.

Assessing Deregulation's Effects on Safety

The Airline Deregulation Act did not in any way change the scope or intent of air safety laws and regulations. In some areas, notably the commuter airlines, safety regulations have become more stringent since 1978. However, deregulation has altered the nature of competition in the airline industry and has given rise to fears that the risk of specific types of accidents might increase. For example, one concern was that competitive pressures to reduce costs might lead some carriers to skimp or take shortcuts on maintenance with a resulting increased risk of equipment failure. An examination of the record, however, shows that the concern is thus far unfounded. For jet carriers, the post-deregulation rate for accidents precipitated by equipment failure has fallen from 1.49 accidents per million aircraft departures during 1970 to 1978 to 0.43 accidents per million departures between 1979 and 1985, a 67 percent decrease. For commuter carriers, the rate of accidents involving equipment failure is 71 percent lower in the post-deregulation period.

This decline in equipment-related accidents suggests that deregulation has not led to increased maintenance deficiencies. While deregulation may have strengthened the incentives to cut costs, such incentives existed under regulation as well. Even under regulation, cost reductions were translated directly into higher profits. Moreover, with an increase in the use of hub and spoke route networks under deregulation, even minor mechanical failures can have very disruptive and costly effects on schedules and operations. Thus, the airlines have an important economic incentive to keep maintenance-related problems low.

Another concern was that deregulation might contribute to more pilot and crew error. Deregulation has stimulated increased pressure on airline labor for less restrictive work rules. Pilots and cabin attendants are flying more hours per month and ground crews typically are performing a wider variety of tasks than prior to deregulation. In addition, the rapid post-deregulation expansion of the industry may have reduced the average experience level of airline employees. Despite these apparent pressures, the rates for accidents caused by pilot error have declined from 0.54 accidents per million aircraft departures in 1970 to 1978 to 0.21 accidents per million departures between 1979 and 1985. Similarly, the rate for injuries caused by a failure to fasten the seatbelt has also declined by 54 percent suggesting that, if anything, cabin attendants have been more effective in making sure that passengers fasten their seatbelts when turbulence is expected.

Another concern is that safety has been reduced because of increased pressure on the air traffic control system from the combination of changes in routes and schedules in the wake of deregulation coupled with the aftermath of the 1981 dismissal of the striking PATCO controllers. The rates for accidents caused by air traffic control error have never been high and actually declined from 0.26 accidents per million aircraft departures prior to deregulation to 0.11 accidents per million departures during 1979 to 1985. Thus, in terms of accidents, there is no evidence that the air traffic control system has functioned less safely after deregulation than before. Similarly, the rate of airline accidents involving general aviation aircraft has not increased since deregulation. Thus despite the added pressure on the air traffic control system and on the airspace surrounding large airports because of the bunching of flights due to intensified hub and spoke operations, the rates for the sorts of accidents that some had feared might increase have, in fact, gone down.

An important feature of the post-deregulation environment has been the transfer of low-density service to and from small communities from jet carriers to commuter airlines. Commuter airlines, which operate turboprop aircraft for the most part, have grown steadily since deregulation. This replacement service has been accompanied by concern that small community travelers might face increased risk from the perceived poorer safety performance of commuters.

In the aggregate, the commuter industry has amassed a safety record in the post-deregulation years that is about four times worse than that of the jet carriers. However, some important segments of the commuter industry have substantially better safety records than the aggregate record indicates. In fact, most replacement service has been provided by the larger commuter carriers, whose safety record, while still not as good as that of the jet carriers, is about twice as good as the commuter industry overall. For example, jet carriers experienced 0.30 passenger fatalities per million enplanements between 1979 and 1985, compared to 0.67 passenger fatalities per million enplanements for the 20 largest commuters, and 1.27 passenger deaths per million enplanements for the commuter industry as a whole.

However as noted earlier, the commuter industry accident rate has decreased markedly since the 1970s. The improvement in the safety record appears to be related to a variety of factors, but especially to the increased use of larger aircraft, a decline in the use of piston engine aircraft, improved airport and aircraft navigation aids, and strengthened safety regulation for the larger commuter carriers. Moreover, replacement commuter service typically involves fewer intermediate stops, and therefore, fewer "extra" takeoffs and landings, than the jet service it replaced, so that any reductions in safety due to commuter substitution may be overstated.

The Margin of Safety

Despite improving accident rates, some continue to argue that safety in the industry has deteriorated and that accident rates are not adequate measures of safety. Accidents are held to be the result of safety degradation; therefore accident rates possess no predictive power. It has been suggested that pre-accident indicators, which would capture deterioration in safety before accidents occurred, be developed. These pre-accident indicators would be used to track the margin of safety in the industry—the cushion which allows failures to occur in components of the nation's air transportation system (mechanical, human, and technological) without resulting injury to person or damage to property.

While the margin of safety is an intuitively appealing concept, it has not yet been defined in a way that allows measurement. However, some have suggested that changes in the frequency of safety related problems (incidents) provide insight into changing probabilities of aviation accidents. For example, by tracking changes in near midair collisions, air traffic control operational errors, and pilot deviations, it would be possible to take corrective action before such incidents become accidents. Implicit in this argument is the premise that incidents act as leading indicators for accidents, or, as the Congressional Research Service stated in a January 1988 Issue Brief, "Trends in these indicators suggest that the risk of flying is increasing even if the accident rate is not."

However, the Commission's analysis of these incident data has not led to a conclusion that they are suitable as leading indicators of the actual risk of accident. The data originally were developed, and currently serve, to better manage limited resources and balance the sometimes competing demands of efficiency, effectiveness, and safety. These data do not at present, however, appear to serve as reliable predictors of future accidents.

"Near Misses"

Near midair collisions are defined as incidents where aircraft pass within 500 feet of one another or are in such proximity that an air crew member reports that a collision hazard existed between two or more aircraft. Near midair collision reports are typically pilot initiated. Thus, whether an incident is, in fact, a near miss and whether it is reported as such depend on subjective perception and individual discretion. Pilots may not realize they've been close to another aircraft or they may choose not to report the incident. The difficulty with interpreting near midair collision reports is that a change in the number of reported incidents could be due to a change in the underlying risk of midair collision, a change in the propensity to report incidents, or simply a change in the number of aircraft operations with the same underlying risk per operation. It is currently not possible to distinguish among these alternatives. Thus, at this point these data do not appear to be reliable pre-accident indicators.

Information about near midair collisions is collected by both the Federal Aviation Administration and the Aviation Safety Reporting System (ASRS) operated by NASA-Ames. The system administered by the FAA has operated in various forms since 1959 and has received a greater number of reports in recent years, while ASRS has been established for over a decade and offers some immunity from FAA sanctions to pilots who commit errors leading to reported incidents.

The two reporting systems give different pictures of whether near midair collisions have grown more or less prevalent in recent years. For example, the FAA reports a 124 percent increase in reported near midair collisions between 1983 and 1987 while ASRS reports a 17.6 percent decline over the same period. Clearly, the FAA data suggest there is reason to be concerned because near midair collisions are on the rise. The ASRS data suggest the opposite. Neither the Commission nor, to our knowledge, anyone else has been able to determine which might be the more reliable indicator of year to year changes in the total number of near midair collisions.

Operational Errors

Another frequently cited indicator of system safety is the number or rate of "operational errors." An operational error is when an aircraft has less than the minimum required spatial separation from another aircraft or from an obstacle because of an error by some part of the air traffic control system. Such errors are classified by severity level based on how close the aircraft actually get to one another. Operational errors can occur at both en route centers and in terminal areas. In terminal areas they can occur either when aircraft are in the air or on the ground.

Operational errors at en route centers seem, at first glance, to have risen dramatically in 1983 and again in 1984. However, these changes are in part because of new reporting procedures. In 1984, the FAA installed the operational error detection program (OEDP) to record automatically violations of separation standards at en route centers. Thus, the big reported increase beginning in 1984 is due at least in part to reporting changes instituted by the OEDP (the so-called "snitch patch").

Prior to the snitch patch, detection of en route operational errors was judgmental and reporting was discretionary. Although horizontal separation of at least five miles is required, a reduction of separation to 4.9 miles might not have elicited a reported error because it was not detected or was considered not to pose a hazard. With the installation of the OEDP these relatively minor errors are counted as operational errors. The large increase from 1982 to 1983 was prior to the snitch patch and probably due partly to air traffic increases as a result of economic recovery and the relaxation of capacity constraints subsequent to the PATCO strike of 1981 and partly to the increased awareness of operational errors leading up to the formal introduction of the snitch patch.

En route operational errors declined in 1985 and 1986 and remained relatively constant in 1987 as controllers became used to the new regime and took advantage of computer refinements, notably the ability for controllers to display a five-mile "halo" on the screen around targets, to help them determine the precise separation they were maintaining. Few en route operational errors have been classified as "major" errors between 1985 and 1987. Indeed, "major" and "moderate" errors together account for less than 20 percent of all en route operational errors. Apparently, a large majority of these errors did not pose an immediate and real danger to safety.

Pilot Deviations

Pilot deviations, another suggested pre-accident indicator, are violations of a Federal Aviation Regulation resulting from the actions of a pilot. Despite increases in reported pilot deviations of more than 42 percent between 1985 and 1986 and more than 38 percent between 1986 and 1987, the extent of any increased threat to safety is unclear. First, the increased number of reports may be due in part to an enhanced awareness of the possible consequences of a deviation, in the wake of the August 1986 midair collision over Cerritos, California. Second, while the total number of reports increased, the average severity of the deviations decreased. The proportion of reports indicating a loss of standard separation between aircraft declined, the number and percentage of reports involving another aircraft decreased, and the number of near midair collision reports filed as a result of the deviations changed very little.

Pilot deviation data suffer from the same problems as near midair collision and operational error data. It is not possible to determine whether increased deviations are due to increased risk in the system, to increased awareness and greater propensity to report those incidents, or to increased exposure because of the increase in operations. Thus, at this point these data may not serve as reliable pre-accident indicators.

Airport Congestion and Safety

Based on the data examined by the Commission, deregulation does not appear to have adversely affected aviation safety but has brought substantial benefits to the public. Deregulation has also created a challenge to system capacity which has not been adequately met. The Aviation Safety Commission was not asked in its charter to address issues of efficiency of use of facilities, or convenience to customers or suppliers. The Commission's charge was finding ways to improve aviation safety.

The air traffic control system as it currently operates converts excess demand on the system into delay to maintain safety margins. Thus, the system delays which have lately caused so much comment are not themselves dangerous. Rather, delays are a result of flow controls and other FAA measures to assure safe operations. But these delays and the resulting public comment create temptations to accommodate more traffic and avoid pressure by eroding margins of safety. The Commission has no basis for believing that such an erosion has yet occurred. But it is concerned that rising demand be accommodated in ways which ensure that even a subtle temptation to erode safety margins is avoided. Airport congestion and potential remedies are discussed in more detail in Section III.

The Changing Dynamics of the Airline Industry

Deregulation has provided substantial benefits to the economy and to the traveling public and has not led to a degradation of the safety record of the U.S. airline industry. While backing away from economic deregulation of the airline industry would be a mistake, there are changes that the Commission believes should be made to the "safety environment," to preserve and improve upon the industry's excellent safety record. Deregulation has not, in and of itself, made the industry less safe, but it has made the industry much more dynamic. The FAA evolved in an era when the CAB kept the airline industry nearly static and, as currently organized, is not well equipped to ensure the public safety in this new dynamic environment. The problems facing the FAA are significant and if the industry is to continue its outstanding safety record, comprehensive solutions will have to be found.

SECTION II—A NEW ORGANIZATIONAL APPROACH TO AVIATION SAFETY

The Problems

In the post-deregulation environment, FAA has been faced with the demands of a rapidly changing airline industry, but has been asked to respond to these demands with an organizational structure that evolved during a period of industry stability maintained by CAB regulation. This organizational structure may have served FAA well prior to the late 1970s, but it has become increasingly unsuited to the challenges FAA faces in the 1980s and beyond. Specifically, FAA's current organizational status within the Department of Transportation has resulted in five principal classes of problems:

1) effective public control of safety and rulemaking.
2) resource and program autonomy.
3) personnel and procurement.
4) bureaucratic incentives.
5) labor/management relations.

Effective Public Control

The current aviation safety rulemaking process has grown unnecessarily complex and as a result has become slow and unresponsive. The rulemaking process, from petition for rulemaking to the final rule, includes well over 200 separate steps when all parties agree on the rule. Without disagreement, it typically takes over two years to get a final rule. With disagreement, the process becomes even longer with some issues still unresolved after more than 15 years.

There appears to be no single cause for these delays. The blame does not lie with one party, such as the FAA, the Department of Transportation, or the Office of Management and Budget, but rather with a process involving all of them. The rulemaking process includes multiple reviews and yet does not contain clear responsibility and accountability. The Aviation Safety Commission could find few instances where the reviews outside of FAA changed even minor aspects of the technical content of the proposed rules. The result is a process that seeks public accountability but instead generates considerable disagreement and delay. Responsibility has become diffused to the point where decisive action is difficult to achieve except in the wake of an accident.

Resource and Program Autonomy

Resource Autonomy. Instability and uncertainty in the level of resources available to FAA contribute to many of the problems observed in field operations. The federal budget process has grown more contentious, drawn out, and uncertain in recent years because of multiple participants and deficit reduction pressures. Throughout the budget cycle, as much as one-fourth of FAA management time which could be devoted to operations in the field is devoted instead to contingency planning for possible budget changes. In the past, requests for budget cuts frequently have resulted in reductions in training and travel needed by the FAA for efficient operation. Additionally, resources are wasted by erratic execution of the budget. For example cuts in funding for on the job training have been followed a few months later by urgent requests to speed up training. Even contingency plans for furloughs that are never executed can harm employee morale.

The instability and uncertainty in the budget also produces uneven flows of new hires, particularly among safety inspectors, airways facilities technicians, air traffic controllers, and support staff. Hiring has typically come in "lumps," often in response to public or political pressure. Such hiring patterns make it difficult to use new personnel effectively. One example involved the hiring of a group of safety inspectors but no additional staff to support their efforts. Safety inspectors found problems and violations, but without adequate support staff they were hindered in their ability to follow up.

Program Autonomy. The complaints that FAA lacks sufficient program autonomy to carry out its programs free from excessive "outside" influence stem in part from criticism of DOT's involvement in FAA decisions. Policy involvement by the DOT Secretary in aviation matters appears to have been a fairly constant theme since the inception of DOT. The recent National Academy of Public Administration study of the FAA concluded:

> In effect, real control has been diffused into a complex, confusing, and often kaleidoscopic array of authorities among FAA leadership, the Office of the Secretary of DOT, the Office of Management and Budget, the Office of Personnel Management, the White House staff, and several Congressional committees.

Personnel and Procurement

FAA is severely hindered by the personnel and procurement rules under which it must operate. These are the same rules as govern most other agencies, but FAA faces several unique challenges. First, it is an operating agency with continuous responsibilities. The air traffic control system cannot shut down, even for very brief periods of time. New equipment, new procedures, and new facilities must be brought online without even the slightest interruption. Second, the FAA operates the air traffic control system as well as regulates a dynamic industry. FAA is confronted with the need to adjust to changing conditions at a far more rapid pace than ever before.

Personnel. FAA faces two separate personnel problems among its field personnel: geographic flexibility and competitive compensation. FAA does not provide differential compensation across different geographic areas despite wide differences in the cost of living. As one air traffic controller stated, "Why should I live in San Francisco when I can earn the same amount in Portland where the cost of living is much less?" Not surprisingly, FAA has had difficulty filling air traffic control positions in high cost of living areas such as Los Angeles, San Francisco, and New York with resulting personnel shortages in those areas. The problem is not confined to air traffic controllers. FAA also reports difficulty staffing system maintenance technician, safety inspector, engineer, and test pilot positions in high cost of living areas. By contrast, FAA facilities seem to be fully staffed in most low cost of living areas.

There are potential safety implications in these regional disparities. In the case of air traffic control, many of the high cost of living areas are also high traffic areas where the demands on the controller work force are the greatest. Ideally, one would like to be able to put the best and most experienced controllers in the most challenging conditions. Currently, though, FAA finds it extremely difficult to put the most experienced controllers where they are most needed. The result is that some of the busiest facilities are also some of the most severely understaffed both in terms of the number of personnel and their experience level. The absence of cost of living differentials hinders not only air traffic control, but also affects field office functions including system maintenance, safety inspection, and certification.

A second personnel problem is that to fill many positions, FAA must compete directly with private sector positions requiring similar skills and training. The problem is particularly acute for such positions as engineers and test pilots required for aircraft certification, pilots required for check rides, and operations and maintenance inspectors. Competitive compensation also appears to be a problem to a lesser extent for airways facilities technicians, but not for controllers. The problem of attracting qualified individuals sometimes is made worse by Office of Personnel Management (OPM) personnel procedures. For example, in some regions OPM rarely gives the qualifying examination for air traffic controllers thereby adding substantially to hiring delays and potentially discouraging qualified applicants.

A third personnel problem is the lack of continuity in FAA leadership. The average tenure of FAA Administrators between November 1958 and July 1987 was 2.9 years, which is slightly longer than for other DOT executive appointments or for other government executive appointments. By contrast even the longest tenure of an FAA Administrator (4.3 years), has been much shorter than the ten-year term of an FBI Director, the seven-year term of the St. Lawrence Seaway Administrator, or the terms of members of such agencies as the National Transportation Safety Board, the Interstate Commerce Commission, or the Federal Maritime Commission. Moreover, because of staggered terms for board members, these agencies may well have even more continuity than the length of their members' terms implies.

The historical lack of managerial continuity at FAA is particularly troublesome because of the long-term character of many FAA programs. While Administrators can start major programs, there is virtually no prospect of having an Administrator in the job long enough to implement long-term programs. The result, not surprisingly, is a tendency to focus on short-term or highly visible problems rather than on long-term or less visible problems. An example is FAA's emphasis on increasing the number of air traffic controllers while paying less attention to the serious problem of an increasingly inadequate number of airways facilities specialists to maintain the air traffic control equipment. In addition, there is the perception among many career FAA employees that since the Administrator who starts a program will not be there to finish it, full support of new initiatives is not required.

The current FAA organization does not preclude a longer term for the Administrator, but there are some factors that discourage it. One is the average tenure of a DOT Secretary of just over 2.5 years. If a Secretary wants his or her "own" Administrator, the typically short tenure of a Secretary would tend to discourage a long tenure for the Administrator. Of greater importance, however, is the lack of strong incentives for longer tenure. One problem, common among Federal executive positions, is low compensation compared to what these individuals could earn in other jobs. Salary is not typically at the head of the list of why people seek high level government jobs, but there are limits to the magnitude and duration of financial sacrifice most people are willing to accept to serve in the government. If the financial sacrifice were reduced, the qualified people who could be attracted to the job might be persuaded to stay longer.

Procurement. FAA procurement frequently is criticized as cumbersome and inflexible with the result that FAA often encounters considerable difficulty in obtaining either the most modern or the least cost technology. FAA is subject to the same procurement policies that govern most other agencies, yet these policies are frequently ill suited for both FAA and for other government agencies operating in an environment of changing technology. FAA's frequent need for specialized technology plus the budget and leadership instability discussed above aggravate the situation.

There seems to be widespread agreement on the FAA's procurement problems. For example, Secretary of Transportation James Burnley said, in a speech of February 11, 1988 at the National Press Club:

> The federal rules governing procurement are so complex that it takes years even in fairly simple, straightforward purchases. This means that if every step of the process is carried out perfectly, computers, new communications links, state-of-the-art radars and similar high-tech systems may be technological relics by the time they are actually installed.

In remarks before the Washington Conference of the AAAE and AOCI on March 16, 1988, Congressman Norman Mineta said:

> We need to consider whether there are ways in which procurement can be made more efficient, at the same time a meaningful competitive bidding process is preserved, and adequate testing is assured so that the government will be buying a product that works.

Most recently, former FAA Administrator Najeeb Halaby, in testimony before the Senate Aviation Subcommittee on March 23, 1988, said:

> While implementation of the National Airspace Plan has and will continue to provide a tremendous boost to the FAA's capability to respond to demand, it is unfortunately true that the existing procurement process has slowed progress to a substantial degree. As a result, many of today's new improvements are no longer state of the art by the time they come on line.

Bureaucratic Incentives

The incentives the FAA's organizational structure and status give its employees can have an important influence on FAA's long-run performance and effectiveness, and can create three types of effects:

- how incentives shape program design.
- how incentives affect FAA's adaptability to industry growth and change.
- how mixed or conflicting incentives might impede FAA in its mission.

Program Design. Budget uncertainty in FAA's current bureaucratic environment may distort choices between capital (hardware) solutions to problems versus labor (personnel) solutions to the same problems. For FAA now, capital solutions have the advantage that they may be less sensitive to future budget uncertainty and the further advantage that it may be easier to sell "technology"-based solutions in the political process than solutions calling for increases in personnel. The process may lead to a bias against personnel-based solutions even if they might be more effective.

An example of budget difficulties affecting the choice of solutions to FAA problems is the failure to use the SIMMOD simulation model in the early stages of development of the Expanded East Coast Plan (EECP) for air traffic control. The EECP application of the SIMMOD model required a special $500,000 appropriation from Congress. Another operations research model of potential use in studies of airport configurations is currently awaiting similar special funding.

Adaptability to Growth and Change. The technological and economic environment of the aviation industry is changing rapidly. The ability of the FAA to respond to both the opportunities and problems presented by change is paramount. Critics of the FAA cite several examples of the agency's slow response to change. Perhaps the most frequently cited example is the slowness with which the FAA has moved to adapt modern computer technology in air traffic control—a problem attributed to the bureaucracy's conservative decision process coupled with time-consuming procurement procedures mentioned above.

A second example is the slow FAA response to the changing patterns of growth in commercial airline traffic in the wake of deregulation. Deregulation increased the number of carriers, increased the number of routes most carriers flew, changed service patterns by allowing the creation of many new route hubs, and increased passenger traffic. The FAA, accustomed to serving an industry subject only to technological improvement in aircraft, was suddenly confronted with an industry also subject to rapid changes in its operating patterns. FAA procedures and policies developed in an era of industry stability proved poorly suited to a much more dynamic environment.

Mixed Incentives. In any complex organization there are mixed and often conflicting goals and incentives. In an organization like FAA, which has both operational and regulatory functions, mixed incentives can create public and organizational concern about whether safety remains paramount in the face of other governmental needs.

As political appointees, top management in FAA and DOT have strong inclinations to be part of the Administration's team, as do many careerists serving under them. The political reality of responsiveness to the White House and OMB revolves around the disciplines of the budget and appropriation process. This process can create incentives to reduce personnel levels, to reassign personnel ceilings to different functions, to cut expenditures, or to close facilities. FAA also needs to be responsive to Congress and to other constituencies. This need for responsiveness can create potential conflicts with the desire to ensure that FAA operations are effective and efficient.

There is a tendency in FAA's current environment either to take immediate and visible steps which fail to provide permanent solutions, or to announce long-term proposals which are unlikely to be implemented fully. Intermediate-term solutions which may not be visible but which have time frames that hold the current FAA management accountable within its likely tenure tend to be disfavored. An official or an agency can be embarrassed or even punished for visible failure. There are few commensurate rewards for successful programs or innovations, especially when they involve long-term goals or projects. Thus, neither aggressiveness nor experimentation is encouraged. The prudent course is to be seen as never doing anything unfair or wrong.

As a practical matter, ensuring safety in aviation requires the government to have access to a great deal of information that is in the hands of those it regulates, and to oversee decisions for which no set of predetermined regulations can provide rigid, cut-and-dried answers. The FAA must maintain a delicate balance between cooperation with those it regulates, yet retain enough detachment to force compliance when necessary. In the case of regulating aircraft and aircrews, the FAA faces few conflicting incentives as it supervises air carrier managements for whom maintaining safety is only one of several organizational goals (others may include growth and profit, for example). But when it comes to setting standards for its own ATC operations—including training, procedures, staffing plans, equipment specifications, operator qualifications, and for licensing ATC personnel—FAA may face sharply conflicting objectives. For example, a perceived need to increase staffing may collide with budgetary pressures to reduce staff.

In a regulated public utility environment, the regulated firm must meet the regulators' standards, or persuade the regulator to change them. But, when the regulator also operates the "utility," in this case Air Traffic Control, conflicting incentives may arise. For example, operations personnel may tend to cooperate with political decisions rather than examine their consequences fully or there may be temptations to relax regulatory standards rather than incur their political and economic costs.

Both safety and public confidence in the safety of the system might be enhanced if greater separation existed between the functions of regulating the ATC system and operating it. But too sharp a separation might give rise to problems with coordination. The FAA has dealt with this problem in other sectors, such as airline inspection, by assigning an individual and a staff to "specialize" in the oversight of a particular organization. For example, each air carrier has a Principal Operations Inspector who works closely with the carrier to ensure its safety but who is not employed by the air carrier management. FAA has no similar system to maintain confidence that ATC safety will never be compromised to satisfy other organizational goals.

Labor/Management Relations

Labor/management relations, particularly with respect to the controller work force, remain a concern to some observers. The recent formation of a union suggests to many that the problems that precipitated the PATCO strike in August 1981 have, at best, been only partially solved. Employee surveys also suggest continuing morale problems among such groups as airways facilities technicians and en route (ARTCC) controllers. In considering alternative organizational approaches, three aspects of labor/management relations need to be considered: 1) the possibility of a strike; 2) the morale of the work force; and 3) the impact on wages.

Strike. The PATCO strike was extremely disruptive to the nation's air transportation system. The effects, as serious as they were, would probably have been far worse had the economy not been heading into a recession with the concomitant dampening of the demand for air travel. With the growth in the airline industry since 1981, a strike today would likely be even more disruptive.

Morale. Even if labor/management relations are such that potential strikes are not an issue, the morale of the FAA work force, both controllers and those performing other functions, is a factor in the safe functioning of the aviation system.

Wages. The principal wage problems—lack of geographic cost of living adjustments for many groups and lack of competitive compensation for some—were discussed above. Another consideration is the potential impact of alternative organizational approaches on wages.

A New Organizational Approach

The Federal Aviation Authority

Aviation Safety Commission Recommendations:

The Aviation Safety Commission recommends that the functions of the FAA be transferred from the Department of Transportation to an independent, self-financing Federal Aviation Authority composed of a nine-member Board of Governors, an Administrator, who shall also chair the Board, a Director of Aviation Safety, and a Safety Committee of the Board. The Administrator has responsibility for the operation of the air traffic control system and regulatory authority. Both the Administrator and the Director of Aviation Safety would be appointed by the President and confirmed by the Senate for seven-year terms.

The Aviation Safety Commission recommends that the Authority be empowered to establish its own personnel and procurement systems and that its regulations would not be subject to OMB's regulatory review program. It would be financed by user charges, set by the Board after hearings by a User Fee Counsel. General fund revenues would be appropriated only to cover a statutorily-prescribed portion of the budget to cover the share of costs attributable to use of the air traffic control system by the Defense Department or other public agencies.

The Aviation Safety Commission recommends that the Director of Aviation Safety would have responsibility for inspecting, monitoring, and reviewing the system to ensure that the FAA is discharging both its regulatory and operational responsibilities safely. The Director of Aviation Safety would have the power to initiate or disapprove proposed regulations of the Authority affecting aircraft, aircrews, air carriers, or the air traffic control system, including the provision of navigational aids. Regulatory decisions of either the Administrator or the Director of Aviation Safety would be subject to appellate review by a five-member Safety Committee of the Board. The Safety Committee would be composed of four ex officio members of the Board, namely the Administrator, the Director of Aviation Safety, the Secretary of Transportation, and the Secretary of Defense, together with one public member. That public member and four other members would be appointed by the President and confirmed by the Senate to four-year overlapping terms.

The Aviation Safety Commission shares with others serious concerns about the adequacy of the aviation safety system to accommodate future growth in air travel and rapid technological change. Controversy over how best to improve aviation safety must not be allowed to prevent or delay the action needed now to continue a high level of aviation safety for the future. While most of the participants in the political debate have not yet settled on which organizational and other changes will ultimately be embraced, there is a remarkably broad consensus on two needs of the aviation safety system:

—Now is the time for the ATC system to be modernized and expanded to accommodate the millions whom airline deregulation has introduced to air travel and to support the vital role that both airlines and general aviation play in our economy.

—Now is the time to introduce changes into the regulatory system to enable it

to accommodate changes in the numbers and kinds of airlines,

to take advantage of new technology in design and manufacture,

to respond to heightened sensitivity on the part of the public to aviation safety and,

to act on a backlog of potentially worthwhile improvements in aviation safety that have been languishing in the backwaters of a bureaucratic swamp of diffused authority and accountability.

In short, this is the time for decisive action by the Congress and the Executive Branch.

Addressing these needs, and the specific problems of the FAA described earlier, is a complex task involving difficult tradeoffs. Neither an intractable commitment to a particular organizational recipe nor an obsession with minute details must be allowed to preclude a careful evaluation of a broad range of approaches. There is more than one road to Rome in the continuing journey toward improved aviation safety. Disagreements in the current debate reflect differences in perspective and emphasis, not differences in basic goals. The diverse and substantial experience represented by these differing perspectives has been fully shared with and carefully examined by the Commission in fashioning recommendations.

The Aviation Safety Commission believes that the Federal Government must continue to play the central role in ensuring the safe operation of the United States aviation system. The Commission shares the common perception that while the system is safe for now, the present governmental structure is not working very well to ensure its safety for the future. The Commission strongly believes that a major structural overhaul is essential to ensure the future safety of the system.

The Aviation Safety Commission believes that the regulatory process must remain governmental in character and cannot be taken out of the Federal government or removed from public accountability. Since the Commission is not inclined to gamble in sorting out conflicting assertions about whether safety regulatory functions can be separated organizationally from the air traffic control and facilities operation activities currently operated by the Federal Aviation Administration, the Commission cannot endorse the proposition that the air traffic control function should be "privatized." However, as discussed earlier, personnel, procurement, budget, and appropriations practices are major obstacles to implementing the necessary changes in air traffic control, regulatory inspection, aircraft certification, and facilities operation. Thus, the Commission does not endorse merely removing the FAA from the DOT and re-establishing it as an independent agency within the executive branch.

The challenge is to find a way to secure the efficiency and responsiveness to change sought by the advocates of privatization while preserving the public oversight and accountability for safety rightly demanded by the public. While, as said earlier, there is more than one road to the Rome of air safety, the Commission has developed an organizational alternative which it unanimously agrees would be a vast improvement over the present system. The Commission's recommendations address in a constructive way the issues raised in the current debate and reflect the input of the Secretary of Transportation, current and former FAA Administrators, FAA staff, Members of Congress, the National Transportation Safety Board, and industry experts.

Moreover, the Aviation Safety Commission strongly urges Congress, the Executive Branch, industry, and others with an interest in the resolution of this debate, to join forces and take definitive action on these matters before this calendar year is over.

The Federal Aviation Authority

Brief Description:

The air traffic control functions, including the provision of navigational aids, and the regulatory authority, including both promulgation and enforcement of regulations, are removed from the Department of Transportation and placed in an independent authority that, in light of its unique mission, is free from many of the constraints normally applicable to government agencies.

Management:

Administrator is appointed by the President and confirmed by the Senate for a term of seven years unless sooner removed by the President. The Administrator has responsibility for the operation of the air traffic control system and regulatory authority. Promulgation of rules and regulations by the Administrator is in accordance with the Administrative Procedure Act. The views and recommendations of the National Transportation Safety Board will be welcomed in this process. Rules promulgated by the Administrator go into effect automatically unless disapproved by the Director of Aviation Safety (discussed below). The Administrator serves as the Chairman of the Board of Governors (discussed below).

Director of Aviation Safety is appointed by the President and confirmed by the Senate for a term of seven years unless sooner removed by the President. The Director of Aviation Safety has responsibility for inspecting, monitoring, and reviewing the system to ensure that the FAA is discharging both its regulatory and operational responsibilities safely. In discharging these responsibilities, the Director of Aviation Safety has the authority to: 1) participate in the rulemaking process; 2) disapprove regulations promulgated by the Administrator; and 3) promulgate regulations in accordance with the Administrative Procedure Act. Regulations promulgated by either the Administrator or the Director of Aviation Safety are subject to appellate review by the Safety Committee of the Board of Governors. These regulations are not subject to further review by OMB. The Director of Aviation Safety submits his or her budget directly to the Board of Governors. In order to protect this function from undue budgetary pressure which might compromise safety, this budget can only be modified by a majority vote of the Safety Committee of the Board of Governors.

Board of Governors. Final responsibility of the Federal Aviation Authority would rest in a nine-member Board of Governors. Four members of the Board would be ex-officio: Administrator, Director of Aviation Safety, Secretary of Transportation, and Secretary of Defense. A fifth public member shall be appointed by the President and confirmed by the Senate to a four-year term. The remaining four members of the Board of Governors would be appointed by the President and confirmed by the Senate to fixed, staggered terms of four years. These four members would be selected with input from user groups in ways that ensure that the operations and fee structure of the Authority take into consideration the needs of various interests such as airline passengers, air carriers, regional airlines, general aviation, aircraft manufacturers, airport operators, and airline labor.

The full nine-member Board of Governors sets the budget for the Authority, has the authority to establish and collect user fees, and provides policy guidance. The Administrator will propose both a budget and a fee structure to support all the activities of the FAA. The Board's ability to balance competing pressures toward keeping user fees low on one hand and overspending to avoid bureaucratic risk on the other will be enhanced by having its own staff group, headed by a User Fee Counsel to review these matters and make recommendations to the Board.

The Counsel will hold hearings, take testimony, and receive views, not only from user groups and the public, but from government agencies as well. These would likely include the Departments of Transportation, Justice, Commerce, and Defense, OMB, GSA, GAO, the Council of Economic Advisers, and the National Transportation Safety Board. The five public members of the Board will have a strong voice in the decisions regarding the level of user fees and their allocation among user groups.

Safety Committee of the Board of Governors. Five members of the Board of Governors—Administrator, Director of Aviation Safety, Secretary of Transportation, Secretary of Defense, and one public member—serve as the Safety Committee. If the Administrator disagrees with a regulatory decision of the Director of Aviation Safety, the Administrator can appeal the decision to the Safety Committee. The Safety Committee shall have the appellate authority to overturn, with a majority vote, regulatory decisions of the Director of Aviation Safety. The Safety Committee is constructed so that no members of the Board of Governors representing user interests shall have authority on regulatory matters.

Finance:

User fees would cover all capital and operating costs of the Federal Aviation Authority, including the provision of navigational aids, with the exception of those services provided to the military. As at present, compensation for services provided to the military would be funded through a portion of the Department of Transportation's budget. For the Authority, the portion would be set by statute and automatically transferred from the Department of Transportation.

Personnel:

The Authority, with the approval of the Board of Governors, would establish its own personnel system with employees in the federal benefit and retirement plans, strikes would be prohibited, and the Board would have final authority to set pay and benefits and to determine terms and conditions of employment. The Administrator's and Director of Aviation Safety's salaries are set by the Board of Governors and subject to periodic review.

Procurement:

The Authority, with the approval of the Board of Governors, would establish its own procurement system and regulations and would be encouraged to have strong minority and small business programs.

Relationship with the Military:

With the exception of the financing arrangements discussed above, all other relations between the current Federal Aviation Administration and the Department of Defense would transfer unchanged to the new Federal Aviation Authority.

Airport Development:

Expanding airport capacity can make an important contribution to maintaining overall system capacity and protecting the margin of safety. The Administrator and the Board should assist where possible in the development of new airport capacity. They may do so by coordinating and supporting DOT, regional, state, and local initiatives to develop and expand U.S. airports and shall have the power to expend user funds for such activities.

Evaluating the new Federal Aviation Authority Proposal

The new Federal Aviation Authority proposal is designed to fulfill the promise offered by placing FAA within DOT in 1966 while retaining the original benefits sought from the creation of the FAA as an independent agency in 1958. The intent in 1966 was that FAA would remain an autonomous professional organization within the Department. Supporters of placing FAA in DOT hoped that such a move would provide a stable flow of resources and would bring together the various modes to develop an integrated transportation network. However, the experience of the last 20 years has left the promise unfulfilled. As former FAA Administrator Najeeb Halaby said in testimony before the Senate Aviation Subcommittee on September 10, 1987:

> I'm sorry to say that over the years I do not believe those ideals that we sought have been realized. Our hopes, our expectations in supporting the FAA, as part of DOT, have not been realized in practice.

In testimony before the same subcommittee on March 23, 1988, and in subsequent testimony before the Aviation Safety Commission, Secretary of Transportation James Burnley put forth "five criteria against which any reform proposal should be judged:

> First, it must address the problem of rigid personnel rules that prevent efficient deployment of key personnel.
>
> Second, it must remove the burden of abstruse procurement rules that prevent timely acquisition of new technology.
>
> Third, the proposal must liberate the air traffic control system from the uncertainties of the federal appropriations process and ensure adequate resources on a long-term basis.
>
> Fourth, there must be adequate oversight and maximum accountbility to ensure public safety.
>
> Fifth, there should be consistency in both safety regulation and in the delivery of air traffic control services at every level of the organization in charge of each."

The proposal for a new Federal Aviation Authority meets these five criteria. The Authority proposal, by allowing the Board of Governors to develop procurement and personnel systems, provides the mechanism by which the critical problems in these areas can be solved. For example, the Authority will be able, under this proposal, to provide the cost of living pay differentials necessary to deploy key personnel in all functional areas to the locations where they are most needed. Similarly, if the existing pay scales for selected positions such as safety inspectors, certification engineers, and test pilots are inadequate to attract and retain sufficiently qualified personnel, pay scales can be adjusted.

The Authority should also be able to develop a streamlined procurement process better suited to the aviation industry's changing technological environment while still preserving principles of competition and fairness. An improved procurement process coupled with less budget uncertainty should help the Authority respond more quickly not only to new technology, but also to aviation industry growth and changing patterns of airline service.

This new Federal Aviation Authority proposal not only liberates the air traffic control system from the uncertainties of the federal appropriations process, it also does so for the equally critical safety inspections program as well. Most of the resources devoted to maintaining aviation safety already come from a series of taxes that are, in essence, user fees. The Authority is financed on a fully user-funded basis. The only revenues from the general fund compensate for services provided to military and public uses and thus are a form of user fees.

Oversight and accountability are provided in this proposal in several ways. The Authority's user fee basis creates accountability both as to the level and structure of user fees and to the way in which the user fees are spent. Financial accountability is provided through the Board of Governors. The Board, which represents the interests of the government (including the Department of Transportation), the public, and users, must approve the level and structure of user fees as well as the new FAA's budget.

Accountability to the public interest for safety regulation is also provided in this proposal through the Director of Aviation Safety. With the Director of Aviation Safety, the FAA Administrator is not the sole initiator of safety regulations or enforcement actions. The Director of Aviation Safety's sole responsibility is ensuring system safety. The Director of Aviation Safety is also held accountable through the appeals process to the Safety Committee of the Board of Governors. This arrangement holds a single person accountable for the safety of the system while still providing the potential for collegial judgment to overturn that person's actions if they are ill-advised. At the same time, this arrangement avoids any potential problems of day-to-day action faced by collegial regulatory bodies because the Safety Committee serves a solely appellate function, and is expected to be called upon only in unusual circumstances.

National Transportation Safety Board Chairman Jim Burnett has testified before the Senate Aviation Subcommittee that:

> . . . DOT has, on occasion, provided the pressure needed to get significant Safety Board recommendations implemented—recommendations that, based on FAA resistance, would be languishing still without the Secretary's "interference".

Under the Federal Aviation Authority proposal, the potential benefits of having the Secretary of Transportation expedite FAA action are retained. The Secretary of Transportation, or other members of the Board of Governors, can urge the Director of Aviation Safety to disapprove an unwise action by the Administrator or to take action in the face of unwise inaction by the Administrator. Other specific recommendations discussed in Section III of this report should also help speed up and increase the accountability of the rulemaking process.

The fifth criterion, consistency in safety regulation and in the provision of air traffic control services, is also satisfied in this proposal. Consistent safety regulation is addressed in Section III of this report with recommendations for national airline certification and inspection programs. Consistency in the provision of air traffic control services should be enhanced by personnel and procurement reforms.

These five criteria are a good place to start an evaluation of a proposal, but there are other important problems with the current FAA structure, as discussed earlier in this section, that a reform proposal must address as well.

The Commission's recommendations should lead to substantial improvements in the conditions which have caused concern over employee relations. The Commission is concerned about creating a situation where wage costs automatically passed on to the users via government-sanctioned rate increases can lead to rapid wage escalation. The Commission has taken specific steps to represent users' interests in the fee determination process to provide counter pressure.

A fixed term for the Administrator should provide more consistent policy decisions. At the same time, the relationships between the Administrator and the Board of Governors and between the Administrator and the Director of Aviation Safety preserve accountability for policy decisions. The Board and the Director of Aviation Safety, together with the appeals body of public officials, provide mechanisms to assure that the views of other government agencies will be fully and fairly considered. These views would, of course, include the views of the NTSB. Other agency views may also be especially important where safety issues overlap with other concerns such as law enforcement, foreign policy or national security. The Board of Governors or the safety appeals group will see to it that informed opinion is elicited on such matters, whether through formal notice and comment on regulations, or through other mechanisms on non-regulatory questions.

Adding a public member to the Safety Committee of the Board of Governors confronts the Congress with a classic regulatory dilemma. On one hand, it is necessary to preserve both the fact and the appearance of impartiality in reaching decisions on contested issues of aviation safety. On the other hand, many of these issues call for expertise possessed by relatively few individuals who are not somehow involved in the aviation industry. To limit the pool of public members to those who have not recently been affiliated with industry may unduly limit the President and Congress in their search for effective performance of this important function. But a public member of the Safety Committee who has resigned industry affiliations to take up the position may face too many situations in which the appearance of impartiality would be difficult to maintain. The Commission does not believe that there is a single, hard-and-fast set of eligibility requirements which will resolve this dilemma. Rather it suggests that the President and Congress be fully mindful of the need to resolve it satisfactorily as each such member is proposed and confirmed.

The Commission believes that it is important to maintain public confidence that Air Traffic Control System safety will never be compromised to satisfy other organizational goals. To this end, it has emphasized the need for the Director of Aviation Safety to serve an independent "watchdog" function for ensuring that ATC operations are safe. Having an independently appointed official with no operational responsibility should ensure that no compromises with safety are made to accommodate other program or budgetary goals.

SECTION III—THE AGENDA FOR IMPROVING AVIATION SAFETY

SAFETY INSPECTION PROGRAMS

Aviation Safety Commission Recommendations:

> The Aviation Safety Commission recommends that certification for major and national carriers be on a national basis rather than having certificates held in regional offices, as at present. Certificates for smaller carriers would continue to be held in regional and local offices.
>
> The Aviation Safety Commission recommends that a nationwide inspection program be established for all size carriers to carry out a complete safety audit function. This inspection program would combine the current system of regular inspections by inspectors assigned to the carrier with a permanent program of recurring in-depth inspections and periodic unannounced or surprise inspections.
>
> The Aviation Safety Commission recommends that the airline certification and surveillance functions be separated, and sufficient resources devoted to both functions to allow prompt certification without delaying or interrupting inspection activities.
>
> The Aviation Safety Commission recommends that the national inspection program give priority to examining carriers undergoing major change, such as expansions, contractions, new ownership, or mergers.

Background and Discussion:

Safe airline travel depends on many factors including the quality and thoroughness of the airlines' maintenance programs, and oversight and surveillance by safety inspectors of the FAA. Even though frequency of maintenance-related accidents has decreased since 1978, airline deregulation has been accompanied by increasing concern that some carriers may have cut back on maintenance, and that pressures of the competitive market may lead to unsafe operating practices. At the same time, deregulation has increased stress on FAA inspection programs. The existing inspection process, with its local and regional structure, does not have sufficient flexibility to adapt to a dynamic industry environment.

In a deregulated era, where jet carriers are able to serve route networks of national scope, the current regionally-based certification program is an anachronism that hinders effective surveillance. The current system has led to inconsistent interpretation of safety regulations across regions, and therefore across carriers. It has hindered, to the point of largely preventing, effective inspection of a carrier's operations at locations outside of the region where the carrier's certificate is held. This regional system has made it difficult for information about a carrier's operations at one location to be communicated to inspectors examining that same carrier at other locations.

Therefore, the Aviation Safety Commission recommends that a national certification program be initiated for those airlines that operate beyond a regional scope, specifically the airlines classified as majors and nationals by the DOT. In addition to improving surveillance of these large carriers, removing this responsibility from regional offices would allow inspection of small scheduled airlines and air taxis to be strengthened. This approach will introduce greater uniformity of regulations, standards, and enforcement and make the safety oversight function more effective in an era of nationwide route networks and rapidly changing service patterns.

Airline mergers also present challenges to the FAA that national certification could help alleviate. When an airline merges or is acquired, it often remains intact as a separate operating entity as a temporary convenience for the merged company while differences in aircraft types, crew training, and maintenance programs are resolved. However, the FAA inspection force is organized on the same regional basis as certification, so that the acquiring carrier's region assumes responsibility for the merged organization. The inspectors assigned to the "parent" airline may become responsible for the operations and maintenance of another airline that is much different and may be located far away. This arrangement places a growing dependence on so-called "geographic" inspections, which are inspections done by one regional FAA office for another region's assigned carrier. Thus, the surveillance program managers are confronted with the difficulty of balancing geographic inspections of carriers that are the responsibility of other regions with their own inspections of carriers for which they are responsible.

The Aviation Safety Commission also recommends that a nationwide inspection program be established for those carriers whose certificates are held nationally. This inspection program should be designed to carry out a complete safety audit function, with a blend of three types of oversight: regular inspections by inspectors assigned to specialize in a particular carrier; in-depth inspections; and surprise inspections.

Regularly Scheduled Inspections

The FAA currently conducts several types of regularly scheduled inspections on each airline's operations and maintenance functions. Inspectors assigned to a particular airline periodically conduct maintenance base inspections to examine maintenance records, shop inspections to observe maintenance procedures, and ramp inspections to observe the airworthiness of aircraft. Similar operations base inspections study records of flight crew training and rest periods to ensure compliance with regulations. Finally, en route inspections observe actual flight operations, with the inspector riding in a cockpit jump seat.

These base inspections are pre-announced, to improve efficiency in reviewing records and procedures. Inspectors assigned to the carrier try to work with air carriers to achieve compliance when they find discrepancies. Some inspectors have used the airlines' own statistical data to monitor the effectiveness of airline maintenance. In some cases, inspectors have encouraged airlines to set up or expand their statistical reliability programs. Overall, regularly scheduled inspections offer the opportunity for the FAA and the airlines to work together in making air travel safer. This cooperation is important, and formal violations and fines are viewed as a last resort.

In-Depth Inspections

The National Air Transportation Inspection (NATI) of 1984 conducted in-depth inspections of 43 airlines. The program has been renewed each year since 1985 as the National Aviation Safety Inspection Program (NASIP). FAA Administrators have demonstrated support for a national inspection program by funding NASIP each year. However, by having annual renewal for NASIP, the FAA and Congress have not committed to an ongoing in-depth program.

Several characteristics of the in-depth inspections allow them to go beyond the activities conducted under ongoing inspection programs and detect different sorts of problems. Additional manpower allows deeper investigation into maintenance, operations, and record keeping. The in-depth inspections have consistently uncovered problems that had been missed by the ongoing inspection program at the local office, or for which the local office had not taken corrective action. A permanent national in-depth inspection program would improve the ability of inspectors to learn from the experiences of carriers and apply these lessons to other carriers. Outside inspectors provide a "fresh set of eyes" and the potential complacency of the inspector workforce is lessened in an environment of occasional outside inspections.

While a program of the scale of NATI would require substantial additional inspector manpower, a more modest program could also have an important impact. For example, a single inspection team of thirty inspectors could perform six in-depth inspections of large carriers per year. A single team could thus inspect each of the current sixteen large jet carriers once every three years. Three teams could provide annual inspections. These sixteen carriers account for well over ninety percent of domestic scheduled passenger enplanements. Separate in-depth teams could be established for the smaller jet carriers and the regional airlines. The types of equipment and operating environments of these operators are different, and teams that specialize in each type of operation might be most effective.

An enhanced national inspection program could produce greater uniformity in enforcement and would improve communication between the ongoing and in-depth inspection programs. Coordination of the efforts of various inspector groups is essential to allow inspectors assigned to the carrier to track recurrent problems and monitor airlines' compliance with the inspectors' recommendations. The in-depth inspections teams should be made jointly responsible for follow-up along with inspectors assigned to the carrier.

Surprise Inspections

During the National Air Transportation Inspection in 1984, far more violations and unsafe practices were observed on unannounced cabin inspections than on inspections for which prior notice was given. Current practice is, however, to give prior notice for all base inspections and to notify airline personnel when conducting ramp and en route inspections. If all airlines were to be on notice that unannounced inspections were an integral part of the inspection program, airlines would have increased incentives to keep their day-to-day operations in close conformance with safety regulations.

Certification

Every time a new airline is formed, a merger occurs, or new equipment is put in service, the FAA must certify the new or changed carrier. Certification involves page-by-page approval of operations and maintenance manuals, checkrides for the airline's senior pilots, and proving runs for the entire operation. Delays in certification add to the costs of start-ups and mergers. Excessive certification delays can be a serious barrier to entry in the industry and undermine the competition on which deregulation is based. In a competitive environment, the FAA is under pressure to address certification on a priority basis. Recently, certification activities have diverted resources from surveillance to the detriment of inspection activities.

Both surveillance and certification are important. The Aviation Safety Commission recommends that the airline certification and surveillance functions should be separated, and sufficient resources added to allow prompt certification without delaying ongoing inspection activities.

Re-examination of Air Carriers Undergoing Rapid Change

The ability of airlines to expand and adjust their operations is one of the prime contributors to airline competitiveness and efficiency. These changes, though, can sometimes create difficulties in managing and controlling operations and maintenance activities. Also, mergers may present problems of integrating maintenance and operating procedures previously carried out by the separate organizations, frequently involving different types of equipment, different cockpit procedures, and the like. In view of the stresses these changes may produce, the Aviation Safety Commission recommends that the national inspection program give priority to examining carriers undergoing major change, such as expansions, contractions, new ownership, or mergers. This heightened attention might take the form of special in-depth inspections.

REGIONAL AIRLINE SAFETY

Aviation Safety Commission Recommendations:

The Aviation Safety Commission recommends that the FAA move toward reducing differences in equipment standards between aircraft operated by regional carriers and those operated by larger jet carriers. The FAA should move to require that all aircraft providing scheduled service eventually meet the design and performance criteria of Air Transport Category Aircraft (Part 25).

The Aviation Safety Commission recommends that the FAA move toward reducing differences in operating practices between regional carriers and larger jet carriers. The FAA should move to require that all carriers eventually meet the operating requirements of Part 121 operations.

Background and Discussion:

For the most part, regional (or commuter) airlines operate propeller-driven aircraft seating 60 or fewer passengers, are covered by FAA Part 135 regulations, and conduct relatively short-haul flights on low-density routes. A small number of regionals operate a few jet aircraft and some operate under Part 121 regulations. While the regional industry as a whole has experienced considerable improvements in safety over the past two decades, regional airlines remain less safe in the aggregate than large jet carriers. Despite improvements since deregulation, regional air travel remains more risky than jet air travel, by more than a factor of three in terms of fatalities and more than a factor of ten in terms of serious injuries.

Regional airline safety regulations underwent a major revision by the Federal Aviation Administration in 1978. Pilot requirements were brought more in line with those for jet airline pilots. Revised maintenance requirements included more detailed and extensive procedures, as well as additional maintenance record keeping. Minimum equipment lists for regionals were also established for the first time in the 1978 FAA revisions.

The regional industry is composed of many carriers of greatly varying sizes, fleet mixes, and route structures. Safety performance within the regional industry varies greatly and appears to be roughly inversely related to carrier size. The top twenty carriers have maintained safety records significantly better than the rest of the regional airline industry and nearly as good as the large jet airlines. One possible factor in the superior safety performance of the largest regionals is that many of the aircraft they fly seat 30 or more passengers and must meet the higher performance standards of Air Transport Category Aircraft (Part 25). In addition, many of these carriers utilize operating procedures more in line with large jet carriers than their smaller regional counterparts. These large carriers showed the least safety improvement following the safety revisions of 1978, perhaps in part because they had previously instituted many of the procedures contained in the safety regulations made mandatory for Part 135 operators in 1978. The dramatic improvement in safety records for the rest of the regional industry appears related to the 1978 safety revisions.

Given the thrust of many of the 1978 revisions, the reduction in regional airline fatality rates might have been expected. The tightened maintenance procedures have probably contributed to the reduction in accidents involving equipment failure. The added pilot certification requirements coupled with added recurrent training have likely contributed to both reduced pilot error and reduced weather-related fatalities. Weather-related fatalities may have also been reduced by tightened regulations regarding navigational equipment for IFR flights. However, even with the tightened FAA regulations, the larger carriers may still have more effective operating and maintenance practices than the smallest carriers have been able to achieve.

One possible reason for the higher rate of equipment failure among the smallest carriers is that they are more likely to operate small piston-engine aircraft seating nine or fewer passengers. Earlier analysis has shown that small carriers operating either piston-engine aircraft only or a combined fleet of both piston- and turbine-engine aircraft experience a much higher rate of passenger fatalities than larger carriers. The smallest carriers also experience a substantially higher rate of fatalities from weather-related accidents. Again, it may be that the smaller piston-engine aircraft usually operated by these carriers are more difficult to operate in adverse weather than the larger air transport category aircraft usually flown by the largest carriers. These smaller aircraft may also not be equipped with the same navigational equipment for instrument flights.

In addition, many of the 1978 FAA revisions did not apply to aircraft seating nine or fewer passengers, so that their operators are not subject to some of the same tighter requirements. Indeed, even aircraft seating 10 to 19 passengers had somewhat less extensive requirements than for larger aircraft. Recent trends toward affiliation of regional carriers with major airlines may serve to reinforce these practices, to the degree that the major airline maintenance and safety programs are extended to the regional affiliate. Given the apparent increase in regional safety after extension of regulations in 1978 to the larger carriers and the poor relative safety record of the smallest carriers, further improvements in safety might be achieved by extending coverage of such regulations to smaller carriers and aircraft types. For example, the ability to clear obstacles at the end of a runway after take-off with one failed engine is only required for aircraft with 20 or more seats; the ability to suffer a failed engine before takeoff speed and stop on the remaining runway is only required for aircraft with ten or more seats. Given the substantially higher probabilities of engine failure in the smallest regional aircraft, such requirements might be expected to have significant safety benefits.

Overall, the issue of regional airline safety should be addressed by moving toward uniformity of equipment and operating practice standards for scheduled passenger service. Safety regulation should move to reduce and eventually eliminate differences in operating and aircraft standards, moving toward the standard of regulations for air transport category aircraft (i.e., those currently applicable to operators of large planes).

GENERAL AVIATION IN THE AIR TRAFFIC CONTROL SYSTEM

Aviation Safety Commission Recommendations:

> The Aviation Safety Commission recommends that the FAA should designate around all large, medium, and small hubs, buffer zones whose horizontal boundaries are marked by clearly identifiable geographic or navigational landmarks and whose vertical boundaries begin at the ground and extend to the highest altitude used by civil aviation. Any aircraft that enters a buffer zone or flies above, below, or through a Terminal Control Area (TCA) must have an operating Mode C transponder.
>
> The Aviation Safety Commission also recommends an increase in enforcement activities against aircraft who violate TCAs or buffer zones and a restructuring of enforcement procedures. A separate radar position dedicated to tracking violators should be established at each TCA.

Background and Discussion:

The public concern about general aviation aircraft in the air traffic control system stems mostly from the perceived risk of midair collision to commercial airliners posed by the presence of general aviation aircraft. Historically, such risks have been quite small but such accidents evoke considerable publicity. Between 1975 and 1986 there were 329 midair collisions in the U.S. of which about 60 percent involved fatalities. Of the fatal accidents during this period, two involved jet airliners. In 1978, a Pacific Southwest Airlines Boeing 727 collided with a four-seat Cessna 172 in San Diego. In 1986, an Aeromexico DC-9 collided with a four-seat Piper Archer over Cerritos, California.

Such accidents, coupled with the dramatic post-deregulation growth in air carrier traffic, have heightened concerns about midair collisions and those concerns have focused on reports of near midair collisions collected by the FAA and NASA-Ames. General aviation aircraft figure prominently in near midair collisions reported by pilots to the FAA. During the period 1985 through 1987, there were 1,064 near midair collisions involving an air carrier reported to the FAA of which 758 (71 percent) involved a general aviation aircraft. Moreover, reports of near midair collisions between air carriers and general aviation aircraft more than doubled between 1985 and 1987.

The air traffic control system is designed to keep aircraft under its control from colliding with one another. Aircraft operating under instrument flight rules (IFR) are in constant radio contact with air traffic control and respond to controllers' instructions to change altitude and direction. Virtually all airline flights operate under instrument flight rules, even under conditions of clear weather and good visibility. Many general aviation flights, however, operate under visual flight rules (VFR) and are not in communication with air traffic controllers and cannot respond to their instructions. Because air traffic controllers do not communicate with VFR flights, they cannot prevent collisions between two VFR aircraft.

Controllers do, however, have the potential capability to prevent collisions between an airliner operating under IFR conditions and a general aviation aircraft operating under VFR conditions. If the controller is aware that the VFR aircraft poses a threat, the IFR aircraft can be instructed to change altitude or direction to avoid the threat. The difficulty is that not all general aviation aircraft are equipped to provide the controller with the information to determine easily if a threat exists. Aircraft without so-called Mode C transponders do not provide information to the controller about the altitude at which they are operating. Without Mode C, a controller cannot tell the difference between a general aviation aircraft that poses a collision threat to another aircraft and one that is several thousand feet above or below and thus poses no threat. When faced with a VFR aircraft without Mode C, the controller must make a subjective judgment about the severity of the potential threat. If that same aircraft had Mode C, the controller would know immediately if it was necessary to have the IFR aircraft change altitude or direction to avoid a collision.

The Aviation Safety Commission has concluded that safety could be improved while simultaneously reducing air traffic controller work load, especially during busy periods, if altitude information were available to the controller for all aircraft appearing on a controller's screen (primary visual display). While such information would be very useful at en route centers (ARTCCs), it is especially vital for safe operations in terminal areas (TCAs).

Therefore, the Aviation Safety Commission recommends that the FAA should designate around all large, medium, and small hubs, buffer zones whose horizontal boundaries are marked by clearly identifiable geographic or navigational landmarks and whose vertical boundaries begin at the ground and extend to the highest altitude used by civil aviation. The basic area for the buffer zones will begin at the point when normal descent into the airport by commercial jets reaches 12,500 feet or normal climb out of the airport reaches 12,500 feet, whichever is further from the airport. Any aircraft that enters a buffer zone or flies above, below, or through a TCA must have an operating Mode C transponder.

No aircraft or user will be exempt from the regulations regarding the buffer zones. Any aircraft equipped with a Mode C transponder will be required to have its Mode C equipment inspected annually. Currently, the FAA requires all aircraft that fly in IFR conditions get a biennial inspection of its transponder, encoding altimeter, and pilot-static system (which measures altitude). A mandatory inspection may be the only way to make the recommendation of a buffer zone effective. Because the controller will not receive verbal verification of aircraft's altitude if it is not under positive control, the controller must be confident that the information sent by the Mode C equipment is accurate.

This recommendation does not imply that current TCA boundaries need be changed nor that more aircraft need to be brought under positive air traffic control. Rather, the recommendation is intended to provide more information to the controllers about uncontrolled aircraft and to make it easier to avoid conflicts between controlled and uncontrolled aircraft.

The Aviation Safety Commission also recommends an increase in enforcement activities against aircraft who violate TCAs or buffer zones and a restructuring of enforcement procedures. The current system is too cumbersome to be effective and places too great of a burden on controllers whose primary responsibility is traffic separation. A separate radar position dedicated to tracking violators should be established at each TCA. The position would be staffed by a developmental controller only during periods with high potential for violations, typically during periods of high general aviation activity. A controller observing a violation would "hand off" the violator to the enforcement position whose responsibility would be to follow that aircraft until it could be identified.

AIRPORT SAFETY AND AIRPORT CAPACITY

Aviation Safety Commission Recommendations:

The Aviation Safety Commission recommends that the FAA address the issue of the appropriate threshold for airport certification and inspection. Certification and inspection programs should be based on the passenger volume rather than the type equipment serving the airport.

The Aviation Safety Commission recommends that the FAA review existing policies concerning the use of terminal airspace and airport capacity. Particular attention should be paid in this review to airport signage, directional indicators, and taxiway and intersection markings.

Background and Discussion:

Airport Safety

Delays and congestion are currently the price paid by the traveling public to maintain safety as demand for air travel continues to grow without a corresponding growth in airport capacity. Deficiencies in airport safety features have rarely been held responsible for an accident, but the potential is nevertheless cause for concern. The FAA's efforts to maintain and ensure airport safety center on the Airport Safety Certification Program, which involves annual inspections of 708 airports nationwide. Currently, full certification is required for all airports receiving or expecting to receive regularly scheduled service from aircraft with 31 or more seats. Airports not receiving such service are exempted from some of the specific provisions. In particular, many of these airports are not required to obtain crash/fire/rescue (CFR) equipment.

In 1984, the NTSB conducted a full evaluation of the certification program, and attributed the program with reducing the rate of airport-related accidents. Of course, attributing this improvement directly to airport certification is impossible, because of other contemporaneous factors such as improved navigational aids and aircraft systems. Several NTSB accident reports credited the availability of crash, fire, and rescue systems with saving lives and reducing property losses. However, many small airports without these facilities are carrying a growing number of passengers, have higher accident rates, and fewer navigational aids. The certification program should eventually be extended to all airports receiving scheduled service and the criterion for inclusion should be changed to reflect passenger volumes rather than types of aircraft.

Runway and Ground Incursions

The collision of two aircraft on the ground poses the potential for tremendous loss of life. While there have been few ground collision accidents, the number of reported near-collision ground incidents has increased significantly in the mid-1980s. Other types of incursions also present safety risks, including construction equipment and aircraft servicing vehicles.

Airport design and runway layout appear to bear little or no relationship to the number or frequency of incursions. Also, incursions generally do not occur during busy periods, but in more slack times, where controller or pilot vigilance may be lower. Most of the runway incursions occurred during nearly ideal weather conditions as well. However, there are policies and efforts which likely would serve to increase airport safety with respect to incursions by ground and aircraft equipment.

Most of the reported airport safety deficiencies involve a lack of signs and directional indicators. Lighting and marking standardization has helped make it easier for pilots flying into unfamiliar airports;

however, an increasing number of ground operational errors suggests that standardization of signs might help improve safety as well. An additional improvement might involve more attention to painted taxiway and intersection markings, which have helped traffic flows at New York LaGuardia. The FAA has just begun a program to develop consistent standards and specifications for signs. New initiatives also have been planned for improvements in crash/fire/rescue systems and for the provision of adequate runway safety overrun areas. These efforts should be encouraged.

Runway incursions and airport incidents need to be treated in a preventive rather than reactive framework. The FAA should adopt a quality assurance program approach to these incidents, including follow-up to insure corrective action has been taken. The Air Traffic Control Academy currently does not teach ground and local controller techniques, or provide practical instruction on coordination procedures between ground and local controllers. In addition, there are no standard retraining procedures for controllers involved in repeated operational errors. Such a requirement should be instituted.

Airport Capacity and Planning

While a full-scale technical review of the use of terminal airspace and airport capacity is beyond the scope of the Aviation Safety Commission, the FAA should be encouraged to undertake a review of existing policies in these areas. Some of the topics which might be considered include: separation standards between aircraft; rules for runway operation; the effects of increased separation of different types of aircraft; and provision of short runways and separate approaches for smaller aircraft. Weather-related technologies should also be reviewed, since investments in wind shear, wake turbulence, and hazard indicators may increase both safety and capacity.

The public's confidence in aviation safety is weakened by delays. Airport congestion and consequent delays have increased substantially since deregulation due to growth in traffic volume, increased reliance on hubbing strategies, and local airport use restrictions. The number of congested airports has grown beyond the four—LaGuardia, Kennedy, O'Hare, and National—at which slots have been controlled. Peak-hour demand exceeds supply at slot-controlled airports and congestion becomes an even more acute problem at those airports under unfavorable weather conditions. Based on anticipated growth in airline traffic, congestion is likely to increase markedly in the absence of efforts to expand capacity or reallocate demand, and still more airports are very likely to become congested.

The principal obstacles to increasing airport capacity are financial, organizational, and environmental. Recommendations made elsewhere in this report to improve safety should also alleviate some of the financial and organizational problems in expanding capacity. But the environmental problems are somewhat more intractable, as well as beyond the scope of this Commission's work. Further, in an era of Federal budgetary constraints, airport planners must look increasingly toward reliance on local airports and on users to finance such added capacity as it is feasible to create. Even so, with the existing pattern of local opposition and current institutional arrangements, there appears to be little near-term prospect for adding substantial capacity at congested airports or for building new airports.

Perhaps the only approach likely to add capacity in the near term is the construction of additional short runways for commuter and general aviation traffic. Such runways would often pose less serious environmental problems than would new longer runways, and are thus less likely to meet extensive local opposition. They also can be constructed in less time and at lower cost than new jet runways.

These limited-service runways can substantially increase the capacity at large airports by adding capacity for concurrent operations by large and smaller aircraft and making it possible to separate slower aircraft from jets. The more homogeneous the mix of aircraft using a particular runway, the greater is the capacity of that runway, because uniform speeds require less airspace to maintain separation and pose less risk of vortex (wake) turbulence. So a new runway which allows separation of users into more uniform speed and size categories can actually increase the capacity of the longer jet runway by a larger number of movements than the number of small-aircraft operations diverted to the new, shorter runway. Boston's Logan Airport has successfully introduced such a runway. These runways should be encouraged and constructed.

The additions to capacity from these runways will help, but they are not enough. Avoiding pressure on the margin of safety requires additional capacity to accommodate growing demand, no matter what other measures are taken to attempt to bring demand in line with capacity over the nearer or longer terms. In the meantime, consideration should be given for better methods than delay to allocate existing capacity.

Efforts to Relieve Congestion by Rationing Capacity

Since increasing capacity by major, new construction appears unlikely, it may be worth exploring methods to relieve congestion by allocating existing capacity to promote more efficient use. Historically based slot controls and slot lotteries are two means that are frequently mentioned, but both have serious drawbacks.

A system of slot controls with slots allocated by some sort of historical basis can encourage slot holders to "bank" slots for which they have no current need, in order to preserve them for a time when they may be needed or to keep them out of the hands of their competitors. Even the opportunity cost of these slots is not reflected in current accounting systems, since they are not recognized as property and therefore are not included in airline asset bases. The slot control system makes it difficult for slot holders to change their own operations readily and makes it even harder to shift slots among users to achieve more efficient operations. Slot controls provide no basis or incentive for facility operators to encourage more efficient facility use.

The system of fixed allocations has been called anticompetitive (by the Justice Department and the now-defunct CAB, among others) because it makes it hard for new carriers to enter an airport with more than a few operations per day.

Thus, both easy entry and easy exit, keys to the competitive regime contemplated by the Airline Deregulation Act, are impeded. The FAA has attempted to reallocate slots from time to time in order to mitigate this problem, but its efforts have been criticized as inadequate, inefficient, and unfair—the specific criticism depending on whether the critic was an airline wishing to increase operations, expert observers concerned about maximizing the value of the system, or airlines from whom slots were taken without regard to their history or value.

As an alternative to historical allocation, the appropriate number of slots at congested airports could be allocated by lottery. But the lottery method is not well suited to matching supply with the individual airline's demands, especially at airports used as hubs. The lottery approach fails to give signals to the airport about the need for, and value of, additional capacity. It does not provide a source of additional revenues for adding capacity. The slot lotteries run by the FAA at LaGuardia, National and O'Hare to allocate additional capacity during the recovery from the PATCO strike attracted speculators interested less in using the slots themselves than in the value of these slots to others.

Efforts to Control Congestion by Addressing the Demand for Capacity

Several alternative approaches to reducing congestion are based on influencing the demand for capacity through market techniques, rather than on rationing the supply. The Commission is not in a position to recommend any particular way to address the demand for slots, but notes both problems with existing slot allocation systems and that the President's Economic Report, as well as the General Accounting Office and the Federal Trade Commission have endorsed market-based techniques. These factors suggest that market-based allocation methods are a logical alternative worthy of careful evaluation.

The current "cost recovery" method of setting fees for use of runways and airport facilities provides no information to airport operators about the value the different users place on peak-period use and on avoiding delays. Indeed, fees set in this way may encourage congestion by making the facilities available at desirable periods on the same terms both to those who care greatly about timely arrivals and departures and to those who are far more tolerant of congestion and delay. It does not provide airport planners with information about the value users would place on new capacity, nor does it provide the resources which would be needed to finance such additional capacity. Market-based techniques might improve this situation.

The principal market-based techniques which have been discussed are:

Slot auctions. These have the virtue of letting the users themselves set a value on the slots and, because of the existing slot allocation system, may appear to be the least radical departure from existing practices. But auctions are difficult to design so that they will achieve the best balance between stability and flexibility. They present difficulties in accommodating general aviation traffic. Auctions may be difficult to adapt to hub-and-spoke systems as well. Along with other market-based alternatives, slot auctions may not provide incentives to airport operators that enhance system capacity. An airport with high demand which does not add capacity can raise substantial revenues which could be subject to local pressures to pay for other municipal projects. If market-based systems are to be considered, some method must be found to make certain that sums raised from auctions or congestion fees (see below) are used to maintain and increase capacity.

Prices set by operator. The airport operator could set varying prices for a fixed number of slots at specified times each day and on specified days each week. From the users' responses, the operator would be able to discern the need for additional capacity and could raise revenues to be directed toward that need. This system allows continuous adjustment to control congestion and flexibility to accommodate brief bursts of demand. It also accommodates general aviation more easily and makes it easier to accommodate commuter or essential air service by charging such operations different prices. But here as in in the slot auction, the operator would have incentives to maintain scarcity and wasting the revenues through inefficiency or using them for other purposes than expanding capacity.

One method for helping mechanisms to adjust demand to capacity actually increase capacity over the longer term might be to supplement existing landing fees with a Federal congestion surcharge. This would be similar in concept to the method now used by the Port Authority of New York and New Jersey at its air carrier airports, but could be applied anywhere that demand in any given hour exceeded the safe capacity of an air carrier airport. Such surcharges could be set high enough to reduce demand to what would be regarded as an acceptable level of congestion and, hence, delay. These charges could be based on the facilities actually used (i.e. which runway), and the time period in which the use occurs, as well as other factors such as the duration of use of the facilities (including consideration of approach speeds, landing and taxiing times, and necessary spacing between aircraft).

These surcharges could be placed in a fund to be used to increase capacity at congested airports. Any airport at which congestion charges were being collected could apply to the fund for money to increase capacity, preferably to the point where the need for such surcharges was sharply reduced or eliminated. The Commission is not recommending such a program. It simply identifies it as a way of emphasizing that any market-based demand control mechanism which is considered must contain incentives for system expansion if long-term pressures to compromise the margin of safety are to be avoided.

USE OF OPERATIONS RESEARCH

Aviation Safety Commission Recommendations:

The Aviation Safety Commission recommends that operations research be recognized as a standard approach to be considered for problem solving throughout the FAA, including short-run and intermediate-term solutions, as well as for strategic planning.

The Aviation Safety Commission recommends that the FAA's operations research capability be enhanced and that top management support efforts by the operations research staff to keep abreast of new developments in the field. The agency should also conduct periodic reviews of the operations research work to assure that it remains relevant to solving the real-time problems of the agency.

Background and Discussion:

An example of the failure of FAA to use cost-effective intermediate term solutions to problems is the relatively limited application of operations research techniques. FAA has had some successful applications of these applied mathematics methods for solving complex operational problems. These include the use of the SIMMOD simulation model to extend the Expanded East Coast Plan (EECP) to the entire New England region, and the Dynamic Ocean Track System (DOTS) for plotting fuel-efficient flight paths.

The use of such methods, which include modeling, simulation, linear programming, and queuing theory, has not been widespread, even where they could be applied to solving the kind of operational problems for which they have already proven successful. Especially lacking is the use of such methods in addressing some of the strategic planning issues which are a main part of the headquarters's staff mission.

The reasons for the failure to capitalize on this kind of relatively inexpensive approach to solving problems are varied. They include the mixed incentives, discussed earlier, which place a premium on either "quick fixes" or long-term, capital intensive approaches. But there may have also been a lack of commitment or priority by FAA management. Hence, there are a few scattered operations research teams in the agency, but none serving top management. And there is too little cross-fertilization among programs which could benefit from the use of proven applications. Finally, complex funding arrangements appear to have impeded the use of operations research, a matter which other recommendations in this report should help correct.

FAA RULEMAKING

Aviation Safety Commission Recommendation:

The Aviation Safety Commission recommends that the rulemaking process be streamlined and that a disposition date be specified for all rulemaking procedures.

The Aviation Safety Commission recommends that the rulemaking process be restructured to include clear and unambiguous responsibility and accountability.

Background and Discussion:

FAA rulemaking needs to be streamlined. The current rulemaking process is slow and unresponsive. The FAA needs to identify those steps essential to developing sound public policy and eliminate the rest. The Office of Management and Budget and the Office of the Secretary of Transportation lack the necessary technical background to make substantive comments on most FAA regulations and for the most part duplicate FAA's regulatory evaluation activities. Correcting FAA weaknesses in legal and economic analysis would seem a better long term solution than instituting superfluous outside reviews.

Outside reviews, however, are not the sole cause of delays. No matter how delay is measured, the problem of rulemaking delay seems to lie with problems throughout the entire process rather than with any specific step. The Aviation Safety Commission examined 33 final rules generated by Aviation Standards headquarters between 1983 and 1987. The average time from petition to rulemaking was more than two years. Even if outside agency reviews were eliminated, the FAA's regulatory and rulemaking processes could be much more efficient.

The FAA also needs to improve responsiveness to safety issues. Three examples illustrate this point. The first example involves antimisfueling and fuel tank filler opening adapters. The issue was first raised in 1970 by the National Transportation Safety Board as the result of an accident. Although the issue remains active, in eighteen years the FAA has still not developed adequate rules to deal with this problem even though misfueling accidents continue.

The second example involves general aviation aircraft seat strength regulations. In 1970 the National Transportation Safety Board made recommendations to strengthen seats in small aircraft based on accident investigations. After sixteen years, on December 12, 1986 the FAA published a notice of proposed rulemaking in the Federal Register. On January 29, 1988 FAA submitted the proposed final rule to the Office of the Secretary of Transportation for review.

A third example is, perhaps, illustrative of a range of issues where the regulatory process could assure the public a higher level of safety at a somewhat increased cost, but has determined that the cost is "not worth it." There is ample evidence that injuries and deaths could be reduced in accidents involving air carrier aircraft if the seat mountings were strengthened. The so-called 16G seat is claimed by many to be the standard which would make a significant difference. But the simplistic application of cost/benefit analysis has apparently led to a conclusion that the value of the lives saved and injuries prevented or reduced is less than the cost of strengthening the seat mountings.

The Aviation Safety Commission is not taking a position on the technical merits of the 16G seat. However, the Commission believes that the FAA needs to broaden its conception and application of cost/benefit analysis. Properly conducted, such analysis takes into account the value travelers place on increased safety, which may be greater than just the statistical estimate of the change in the probability of death (or injury) multiplied by an arbitrary value of a human life. The total costs of such improvements as stronger seats are easy to measure, but the total benefits, which should include such factors as increased peace of mind, are much harder to capture fully. While such estimates are difficult, the FAA should make greater efforts to include them in their decisions.

The problems of procedural delays and responsiveness would be reduced by improving FAA accountability. At present, there is no focused responsibility for aviation rulemaking. FAA accountability would provide the administrator and the agency with a strong incentive to develop responsive, high quality, timely rules.

A comprehensive review of the rulemaking process should be undertaken. This should be tied closely to the review of the Chief Counsel's Office and the Office of Aviation Standards since a significant portion of the safety-related technical rules are generated there.

Report of the Secretary's Task Force on Internal Reforms of the Federal Aviation Administration

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EXECUTIVE SUMMARY

On March 9, 1988, the Secretary of Transportation established a Task Force to study the Federal Aviation Administration (FAA) and to make recommendations for improving the operation and organization of the agency within existing Executive Branch administrative authority and statutory and regulatory limitations.

The Secretary directed that the Task Force focus on FAA's personnel practices, procurement and rulemaking procedures, budgeting deficiencies and regional structure. These areas are cited by parties both internal and external to FAA as requiring change to improve the agency's responsiveness to a growing and dynamic aviation industry. The intent of the study is to address these concerns and to make recommendations which will maximize FAA's effectiveness and efficiency. More sweeping and fundamental reforms will require Congressional action prior to implementation.

The Task Force placed a high priority on reviewing FAA's organizational structure both in Headquarters and the Regions in order to recommend ways to achieve greater consistency in the interpretation and implementation of statutes, regulations, and policies on a national level. The review included an evaluation of current organizational reporting relationships and the articulation and dissemination of national policy. Changes are recommended in the reporting relationships between Headquarters and the Regions and in the Headquarters organization. Improvements are also suggested for selected management information systems which support critical policy functions.

The most sweeping recommendations affect the reporting relationships of the FAA's Regions. FAA's Regional Division Managers -- those responsible for air traffic control, security, flight inspection, etc. -- will now report to the Headquarters Associate Administrator charged with the oversight of these national programs. This change will result in more central control over resources and consistency in carrying out national program goals and responsibilities.

FAA's nine Regional Directors will have an enhanced role in reporting to the Administrator on the quality and effectiveness of FAA programs and policy. They will give priority emphasis to policy areas and can serve as a "check and balance" to assure effectiveness in the implementation of critical safety programs.

The review also included an evaluation of FAA's effectiveness in deploying and managing its 46,000 employees. The Task Force identified short-term actions to address findings in the areas of staffing, compensation, development, and organizational climate. These recommendations build on existing agency initiatives to expedite the hiring process, support a demonstration project for some geographic pay differentials, increase the representation of women and minorities, improve the selection and development of supervisors and managers, and generally create a more productive climate in the workplace.

Within the limits of Federal procurement regulations, the Task Force considered internal reforms to improve the agency's procurement process. It made suggestions to streamline the acquisition process, increase the size of the procurement operations staff, and establish "dedicated project teams" for major acquisitions. The Task Force also presented recommendations to develop an overall program approval process, improve source selection procedures, expedite establishment of the new office for the Associate Administrator for Advanced Design and Management Control, and generally highlight the procurement function.

The Task Force also evaluated the adequacy of FY 1988 funding and FAA's procedures for managing its operating budget. The Task Force finds that FY 1988 funding is adequate and is being adequately managed, but recommends that FAA institute certain controls in the budget process, expand the Budget Information System agencywide, and require program offices to improve coordination activities with the Budget Office.

With regard to rulemaking, the review indicated that the exchange of information among decision makers and staff members preparing rules is too limited. Under Departmental regulatory policies and practices, regulatory initiatives are not coordinated with the Office of the Secretary until late in the policy development process. Nor are senior FAA officials always closely enough involved in the earlier stages of the process. The Secretary's and the Administrator's suggestions and priorities are not always addressed because appropriate FAA officials may not receive, or be properly advised of their concerns in a timely manner. The Secretary has directed that periodic regulatory status meetings will be held with the FAA Administrator and other appropriate senior-level staff to discuss the substance of regulatory issues and options for responding to concerns.

The Task Force recommendations should strengthen and streamline the agency, and enhance its ability to react more quickly and effectively to constantly changing needs and demands of the aviation industry.

FAA'S ORGANIZATION

INTRODUCTION

Aviation has been characterized by dynamic economic and technological changes.

The FAA organization, on the other hand, has remained relatively unchanged. That organizational structure is restricting FAA's ability to respond quickly and consistently to the constantly changing needs and demands of aviation.

FAA's Headquarters Associate Administrators (AAs) develop policies and programs which the regional and field units implement. Daily program decisions are made in nine Regional Offices and numerous geographically dispersed field offices. This structure is intended to ensure that program services are delivered at the local level in close proximity to the users. Regional Division Managers (the regional program managers such as Air Traffic) report to the Regional Directors, who in turn report to the Administrator. Thus, Associate Administrators, who have responsibility for the success of major programs, have no line authority over program implementation and operations.

The Task Force originally was charged by the Secretary to review FAA's field organization. The Headquarters organization also came under review as a result of considering alternative reporting relationships, the development and implementation of national policies and directives used by the field, and the rulemaking process. Because FAA's Regional and Headquarters responsibilities are so closely intertwined, the organization needs to be viewed as a whole in developing recommendations for change.

MAJOR ISSUES

o Regional Organization

DISCUSSION: The Task Force found that, for the most part, the concept of decentralization has worked well in FAA.

One consequence of decentralization and with the current reporting relationships is that Headquarters policy and program decisions are not always interpreted uniformly by all nine regions. While flexibility in policy implementation is essential in an agency that focuses on time-critical operations, there are areas where maximum consistency is desirable (such as the interpretation and application of regulatory requirements to a dispersed pilot community on to a highly competitive airline community). The flight standards and certification programs are two areas which would benefit from increased consistency among the regions.

Another natural consequence of a decentralized structure is a focus on local or regional concerns. While this focus is necessary, it sometimes precludes the development of a more national perspective. Regional and field staff are not always aware of forces such as Congressional mandates affecting their programs. Their efforts to carry out program responsibilities in a limited geographical area may not always reflect the direction and limitations required by these forces and may not always be in the best interest of a national program.

Under the present system, Regional Directors can shift resources from one program to another without prior clearance from Headquarters officials. Thus, insufficient attention may be given to dedicating resources to areas of national priority. While some flexibility at the regional level in implementing national programs is necessary, there is a need for a more systematic approach to ensure that regions notify Headquarters prior to reprogramming resources from one functional area to another and making changes to national work plans.

Current parallel relationships between Associate Administrators and Regional Directors appears to diminish the ability of senior management in FAA to resolve conflicts or problems short of elevating all issues to the FAA Administrator. Differences must now be resolved through negotiation and depend heavily on the "good faith" of those involved. While negotiation is imperative in any organization, the use of negotiated settlement among officials of equal rank involves tradeoffs, which may not always be in the best interest of FAA's overall goals. In extreme cases where there are unresolvable differences, the current resolution process has the potential to result in inaction until the Administrator can intervene.

RECOMMENDATIONS: The basic operating premise, that Headquarters is responsible for establishing policy and program goals while the regions and field offices are charged with their implementation, should be preserved. Existing reporting relationships should be changed to ensure that programs are implemented more consistently nationwide and in accordance with policy and program objectives articulated by Headquarters officials.

Regional Administrators should be freed of program responsibilities while continuing to serve as the Administrator's representative in each of the nine regions. In their new roles as Regional Administrators, they will provide a "check and balance" in the regions to assure the quality delivery of agency services. They will be the focal point for outside parties who need a central contact at the regional level.

Regional Division Managers should report to their respective Associate Administrators and will be held accountable for carrying out a program, e.g., Air Traffic, to the senior FAA official responsible for that program. This change will redress the lack of consistent interpretation and implementation of statutes, regulations and policies. This will also give the Associate Administrator control of the resources needed to manage a national program.

o Headquarters Organization

DISCUSSION: Changes to the field structure would have a concomitant impact on Headquarters.

The recommended change in reporting relationships will result in increased span of control and workload for the Associate Administrators (AA). In some cases, the number of individuals directly reporting to the AA may increase by as many as nine. For some AAs this represents a significant increase in their span of control. These increased program management responsibilities have the potential to severely tax the existing Headquarters organizations and negatively impact program delivery. Thus, the additional increase in the AAs' responsibilities may prove to be dysfunctional unless other changes are made to the FAA Headquarters.

For example, the AA for Aviation Standards is already charged with overseeing a myriad of relatively dissimilar functions such as aviation medicine, aviation security, aircraft certification, and flight standards which have received more significant attention in recent years. Within each of those functions, there are multiple complex and time-consuming activities ranging from rulemaking to enforcement.

Recent changes in the industry due to market forces and technological advances have caused tremendous growth in FAA's certification and inspection workload compounding these problems.

The FAA has recognized the need for increased guidance and training in these areas, and has initiated Projects SAFE and SMART in an effort to improve and standardize program implementation. While work is progressing on these projects, it appears that these efforts may be slipping from the original schedule. Steps should be taken to put these projects on a fast-track.

Each Headquarters AA operates as a fairly autonomous entity. While this structure may maximize technical and program expertise, it cannot ensure that national policies are well coordinated and conform to overall FAA goals. The Deputy Administrator and Executive Director provide coordination across programs to the extent they can, but neither is staffed adequately to provide optimal levels of oversight for such diverse programs. Nor is FAA organized to respond to Congress, aviation industry groups, and other Governmental organizations such as the Office of Management and Budget and the General Accounting Office, on questions about major programs or on issues which cut across traditional lines of program responsibility.

RECOMMENDATIONS: In order to realize the full benefit for program operations:

Within 30 days, the FAA should develop an implementation strategy for FAA Headquarters. This plan should focus on changes necessary in Air Traffic, Airports, Development and Logistics, Aviation Standards and the Chief Counsel's Office to accommodate the reporting relationships, increased workload and span of control that the previous recommendations entail.

The Office of Aviation Standards should be reviewed to increase its ability to respond to workload demands in the certification and inspection programs, and to increase its overall efficiency through internal restructuring and streamlining, and to ascertain the best organizational placement of the security and medical functions. The development of Project SAFE Aviation Inspector handbooks and related training should be expedited, and the Work Program Management System should be upgraded to provide more useful program performance information.

FAA also should clarify the role of the Executive Director, and enhance his ability to promote coordination and enhance information integration in Headquarters. The FAA should establish a small Headquarters staff to assist the Executive Director in carrying out these responsibilities.

HUMAN RESOURCE MANAGEMENT

INTRODUCTION

The approximately 46,000 employees of the FAA constitute one of the most vital assets of the organization. It is these individuals who plan, direct, and carry out the mission responsibilities of the agency.

In recognition of this importance, the Administrator has already initiated several projects focusing on streamlining the Air Traffic Controller hiring process, increasing pay for critical safety positions, and developing managerial talent and assuring that the impact on human resources is accounted for when technological changes are proposed.

FAA is reviewing planned hiring for consistency with validated staffing requirements and to assure that applicant screening and hiring processes are realistic and expedited. The need to assure equitable hiring of women and minorities in key safety related occupations is a major issue. Air traffic controller training, specifically the need to accelerate the progression of controllers to the full performance level by means of new training procedures, is a priority.

The Federal classification and pay systems do not adequately recognize the differences in FAA working situations and may hinder the ability of the FAA to accomplish its mission most effectively. The problem of supervisory pay compression and the use of financial incentives to attract and retain safety related personnel at difficult to staff facilities is critical.

The talent pool of individuals with inter-disciplinary experience and potential for higher level managerial positions in FAA needs to be expanded. There also needs to be an improved method of identifying and developing supervisors, for determining the adequacy of executive resources, and for streamlining the placement of individuals into executive positions.

MAJOR ISSUES

- Key Initiatives Already Underway

  DISCUSSION: There are five key projects which FAA has already undertaken which the Task Force found are working well.

  Streamlining the ATC Hiring Process: The current procedure for recruiting, examining, pre-employment processing, and selecting employees for the air traffic control (ATC) occupation requires approximately 6 to 18 months. In order to expedite the hiring process, the FAA has developed the Modular Applicant Testing, Examining, and Screening (MATES) program. This requires FAA to: assume partial delegation for conducting the ATC entrance examination; procure optical scanners to provide immediate test score feedback; assume partial delegation of the security clearance procedure from OPM; and enlist the cooperation of the FBI in providing arrest records for potential hires. Use of the expedited processing system will begin by August 30, 1988, with the complete procedure expected to be fully implemented by September 1989.

Staffing Standards: FAA has an ongoing program for the development and use of staffing standards to enhance the effectiveness of the agency work force. Standards are continually reviewed and revised on a multi-year cycle, with ad hoc reviews as needed when new equipment or technology is installed. The standards are used in planning for future staffing requirements, allocation of staffing resources among regions and facilities, and in assessing the impact of programs.

The FAA has recently awarded a five-year contract to provide industrial engineering support for staffing standards development and revision. The FAA is in the process of conducting briefings for regional and facility resource management staffs to insure standards are understood and properly applied. The staffing standard effort is concentrated on the following occupations:

-Air Traffic
-Airway Facilities
-Aviation Security
-Flight Standards

Air Traffic Controller Pay: There is a need to accelerate the progression of air traffic controllers to full performance level (FPL). Academy screening and initial training requires 11 weeks. Controllers then receive 2 1/2 to 3 years of facility, classroom and on-the-job training to attain FPL.

Independent studies of air traffic training were commissioned in the fall of 1987. These studies will analyze training requirements and review advanced training technology with the objectives of enhancing controller performance, reducing academy attrition and using student and instructor resources more efficiently. Among the innovative techniques being considered are: interactive video disk training on aircraft identification and operating characteristics; intelligent tutoring systems; university training in lieu of certain academy training; and enhanced simulation training for radar and manual control functions.

The final reports are scheduled to be delivered before the end of May 1988.

Supervisory Identification and Development: Individuals often appear to be selected for supervisory positions solely on the basis of their technical skill, rather than on a combination of skill and their managerial potential. As a consequence, the FAA has developed and field tested (in two regions) a Supervisory Identification and Development Program (SIDP). The program focuses on the identification of air traffic employees who have the greatest potential to succeed as air traffic supervisors. It provides for a two step screening process which includes an assessment of applicant skills by peers and a demonstration of skills in simulated work situations before a trained panel of interviewers. It has been extremely successful in the regions where it has been tested and the FAA plans to expand the program to all regions. Competition for program participation will be announced in September 1988 with the first selections made by June 1989.

In order to assure that the FAA's NAS Plan is successful, it is necessary to establish an orderly process for managing such issues as staffing, training, and relocating the work force. In recognition of this need, the FAA has established a Task Force responsible for developing a long range strategic plan for managing the human resource aspects of the NAS modernization.

This strategic plan will be based upon the principle that FAA's goals for operational effectiveness, productivity and quality service, and a positive organizational culture can best be achieved through carefully considering and managing the transition of its people. It is envisioned that the plan will become an institutionalized part of the official NAS plan and be updated annually to integrate new or modified requirements.

RECOMMENDATION: Strong FAA and Secretarial support should continue to be given to key initiatives already underway. The Office of the Secretary and the Administrator should carefully track these projects.

- Compensation for Safety Related Positions

  DISCUSSION: The Federal classification and pay system does not adequately recognize the differences in FAA working situations and hinders the ability of the FAA to accomplish most effectively its mission. The supervisory pay compression problem in air traffic control discourages the most talented employees from seeking supervisory positions because to do so often results in a cut in pay. Salaries and benefits fail to attract and retain safety related personnel at difficult to staff facilities.

  A comprehensive study focusing on controller pay was begun in February 1988. The study may result in recommendations for changes in internal policies and OPM regulations, and in legislative proposals.

  RECOMMENDATIONS: The current pay study should be expanded to include all safety related occupations. The study should be expedited so that the resulting system design may be put in place within a year.

  Additionally, an OPM Demonstration Project should be pursued to provide relief to difficult-to-staff facilities, e.g., locality differentials and recruitment and retention bonuses.

- Management Intern Program

  DISCUSSION: Potential managers tend to rise in the FAA within their own specialties. Consequently, key field and Headquarters management positions are often filled with people who have a single-function perspective of the FAA. While these people are highly effective in their own functional areas, they frequently lack the kind of broad perspective which provides for increased effectiveness in an increasingly complex work environment.

  Management intern programs have proven to be an effective way of providing for the employment of high quality potential leaders. Program participants can be provided with a broad background through a systematic development program and can move rapidly into key management positions. While the FAA has used such programs effectively in its administrative areas in the past, there is no such program at this time. Resource limitations and historic career development patterns also have restrained intern programs from being used to develop potential leaders for the operations or technical arms of the FAA.

RECOMMENDATION: It is recommended that the FAA develop a pilot management intern program, composed of two components. The first would be a entry level program for college graduates (or equivalent) who possess managerial potential and an interest in an aviation/managerial career objective. The second component would involve mid-level FAA employees who have demonstrated aptitude in areas such as communications, leadership, interpersonal sensitivity, openness to ideas, and problem solving.

- Affirmative Action

DISCUSSION: Reaching full, representative employment of minorities and women in key safety-related occupations is a difficult process. There is clearly room for progress in this area.

The FAA has recently begun to develop a plan for evaluating and improving the air traffic controller recruiting process. In addition, the FAA has been planning to reactivate the Air Traffic Control Specialist Predevelopment Program in mid-1989. The program consists of on-the-job and classroom training in preparation for entry into the regular controller training program. Participants are individuals currently in the Federal service including FAA employees now working at jobs below their potential. In the past, this program has been successful in increasing the number of women and minority controllers.

Cooperative Education (Co-op) is another program which traditionally has had a high success rate for increasing the representation of women and minorities in technical occupations. This program provides college students with a combination of academic study and short-term (3-6 month) work periods in the agency. Upon graduation, Co-op students may be given permanent appointments without going through additional civil service examinations. The fact that Co-op students are counted against ceiling serves as a deterrent to greater use of the program. There is a current Governmentwide effort to determine if the Co-op students should be excluded from ceiling coverage.

RECOMMENDATIONS: The FAA should accelerate the activation of the ATC Predevelopmental Training Program in order to conduct a "pilot" classroom training module by the fall of 1988.

In addition, the FAA should expand its Cooperative Education (Co-op) program to accommodate an additional 50 Co-op students. Ceiling for these additional Co-ops can be made available through the Department pending the outcome of the Governmentwide review.

- Executive Resources

DISCUSSION: The FAA's allocation of Senior Executive Service (SES) resources has remained virtually unchanged since 1979 in spite of reductions in the Department's overall SES allocation. In the interim, the complexity of FAA's mission has increased, with deregulation of the nation's airspace and a major reconfiguration of the air traffic control system. These changes coupled with the technological advances and requirements of the National Airspace System plan are straining existing executive resources. Consequently, jobs with similar responsibilities may be at different levels -- some are in the SES while others are in the General Management (GM-15) schedule -- solely due to SES allocation.

The FAA is currently undertaking a needs assessment to determine additional SES resource requirements. It is clear, however, that an increase above their current allocation of 143 SES positions is warranted. Any increase in DOT's allocation of SES resources must be approved by OPM based on the review which is now underway. In the meantime, the Department could manage the overall distribution of SES slots within its control to provide for an immediate increase of 5 to 10 percent to the FAA's allocation.

Timeliness in filling SES vacancies is also a concern. To expedite placements, OST is investigating the possibility of an advance certification system which could greatly reduce the time required to fill an SES position once it is vacated.

The DOT Candidate Development Program (CDP), a competitive, broad-based, two-year management development program, has been used on a limited basis in previous years. OPM-certified CDP graduates are eligible for entry into the SES when an appropriate position becomes available without further competition.

Due in part to an anticipated increase in FAA's SES slots, OST is already surveying all of the operating administrations to determine the interest level for conducting another class. FAA and OST have also been working to identify modifications to the CDP system to make it more responsive to the FAA's needs.

RECOMMENDATIONS: As the need for additional SES resources is documented a formal appeal should be submitted to OPM requesting the appropriate increase.

The existing FAA SES allocation should be increased by 5 to 10 percent by managing the positions differently and taking advantage of the time that positions become vacant during the recruitment process.

The Department and FAA need to complete work on a revised program to identify and prepare managers for entry into the SES.

ACQUISITION MANAGEMENT

INTRODUCTION

The Federal Aviation Administration (FAA) has been involved in the acquisition of highly sophisticated technology to perform the task of controlling aircraft in the safest and most efficient manner. This acquisition process, for implementation of the National Airspace System (NAS) Plan, began several years ago and involves purchases and development of equipment and systems into the year 2000. It will result in the implementation and support of a modernized air traffic control system.

A major obstacle to achieving implementation of the NAS plan, identified both within the FAA and by outside critics, is the complexity of the federal acquisition and procurement process. The process is highly structured and involves many agencies outside the Department of Transportation and the FAA. In addition to the FAA's and the Department's directives and regulations, the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP) and the General Services Administration (GSA) have requirements that must be met for any acquisition.

Additionally, purchases of automated technology involve special rules and special authorities controlled by a separate GSA office. Contract appeal procedures are complex and may be filed at FAA, GSA, the Government Accounting Office and/or the Federal courts.

These myriad rules, requirements, and regulations, coupled with the rapidly changing technology available in today's marketplace, have often frustrated the process.

MAJOR ISSUES

o Streamlining the Acquisition Process

DISCUSSION: The Task Force examined the various steps in the acquisition process to determine where the stumbling blocks may exist and what could be done to avoid or remove them.

When the Government procures complex computer systems, such as the Advanced Automation System or is implementing programs requiring the application of sophisticated technology, these acquisitions require a GSA delegation of procurement authority. Additionally, since these are usually major programs, they fall under the detailed planning and alternative decision making requirements of OMB Circular A-109.

The Department has taken a number of significant steps in the last year to strengthen and streamline the OST oversight and approval process for acquisitions. FAA has been delegated additional procurement authority (up to $150M) allowing them to determine procurement strategies and award contracts. Efforts are underway in the Department to reduce duplication, cut down on reviews, and streamline the procurement process by using standardized formats on source selection documents.

RECOMMENDATIONS: The Department should expedite it's revision of procurement orders to streamline source selection procedures, improve planning and reduce duplication by tying acquisitions more closely to the budget process.

In addition, OST and FAA should prepare for OMB's review recommendations to modify Circular A-109 to meet the FAA's real time operating environment and its advanced technological operating requirements. The Department is committed to the goals of Circular A-109 for advanced planning and requirements approval, competition and testing while maintaining sufficient flexibility to deal with the dynamic aviation needs.

Source Selection Advisory Committees (SSAC) will be established for major acquisitions to facilitate the exchange of information between those involved with the procurement process (the Source Evaluation Board) and the Source Selection Official. The SSAC will be made up of senior officials involved in the acquisition action.

A training program will be established for individuals expected to serve as SEB members, evaluation team leaders, or chairpersons.

o Size and Composition of FAA's Contracting Operations Staff

DISCUSSION: When we examined causes for the length of time it takes FAA to award a contract, we noted a lack of personnel on the contracting staff and competing priorities for individuals in other functional groups.

FAA's contracting operations group (ALG-300) is understaffed, given the size and complexity of the major

NAS Plan programs. An initial comparison done for this study identified the problem. Organizations such as the Navy devote substantially more staff to its programs. Navy programs such as the F-18 or F-14 have teams of 6-8 dedicated contract specialists; FAA has one contract specialist to deal with the Advanced Automation System (AAS) which is larger than either of these Navy programs and as complex.

In addition, in the FAA senior contracting officers are handling everything from complex procurement actions to simple administrative contract modifications. Lower level personnel can more efficiently be used for these less complex duties.

Thus, the acquisition process must be strengthened adding staff to implement any streamlined methods of doing business.

RECOMMENDATIONS: An examination of FAA's procurement staffing should be performed to determine shortages and both short and long term needs.

The FAA's FY 1989 budget request begins to address the contract staffing needs. Further examination will determine what additional acquisition staffing is needed in the future. The additional staff would primarily support major programs and would be assigned to the "dedicated project teams."

A staffing plan should be established to include hiring of recent college, law and business schools graduates. This plan could identify on-the-job training requirements, training courses, and progress reports to guide supervisors in working with new hires.

o Organizational Structure and Requirements Definition

DISCUSSION: The NAS Plan is project oriented. The procurement process is intense and time-consuming. It requires some measure of integration and a "team" atmosphere to ensure accountability and responsibility for an acquisition. It also requires recognition of the key role that the contracting staff plays in a successful acquisition.

FAA is establishing an Associate Administrator for Advanced Design and Management Control. Through this change in organization, there will be an office that will have an important role in reviewing and refining requirements for the NAS Plan and other programs. This is a significant step to improve the acquisition process.

RECOMMENDATIONS: "Dedicated project teams" should be established for selected major acquisitions. The team concept should be implemented for other acquisitions as appropriate and staff allows. These project teams would be composed of staff from various functional organizations such as contracting, logistics, engineering, and legal. Immediate training should be provided to program managers.

A senior procurement official should be identified as the point of contact for each major FAA program office. This will improve the flow of information and result in faster and more responsive acquisitions. Thus, a program manager/service director will be able to have a single point of contact for all his/her programs.

BUDGET PROCESS

INTRODUCTION

The FAA has a large work force, major elements of which operate around-the-clock, 365 days a year. Its operating budget consumes more than $8.5 million every calendar day. When budget reductions occur -- as happened in FY 1986 and FY 1988 -- great pressure is placed on the agency in a real-time environment to adjust its spending plans and controls. In FY 1988, the agency is faced with a combination of Congressional budget reductions and mandatory absorption of unfunded costs.

MAJOR ISSUES

- Funding Requirements/Offsetting Planned Savings

  DISCUSSION: FAA Operations funding for FY 1988, while 8 percent higher than spending in FY 1987, is below the level requested by the Administration. As a result of the reductions in the final Continuing Resolution for FY 1988 and of having to absorb pay raises and other unfunded costs under the terms of the Deficit Reduction Agreement, the FAA has had to implement measures in order to operate within available resources, and still meet mandated levels for controllers, safety inspectors, and field technicians. FAA will be able to complete the year within available funding, but a number of programs will be affected.

  For example, microcomputer purchases have been deferred until FY 1989; stocks and stores levels will be temporarily below normal supply levels; permanent change of station funding will be monitored closely; administrative, conference, and non-operational travel has been reduced; savings in training costs are anticipated by hiring former military controllers and by reducing non-safety critical training; and contracts have been held to FY 1987 levels by requiring overall absorption of inflation adjustments.

  RECOMMENDATIONS: The Administrator should continue to monitor resource utilization and program performance in all program areas through the Administrator's Review Committee throughout the remainder of the year to ensure that adequate resources are available for critical safety programs. FAA has a small amount of additional funds available to cover unexpected requirements, and additional funds may become available depending on actual contract awards by the end of the year.

- **Timeliness and Effectiveness of Budget Actions**

  DISCUSSION: It is essential that FAA advise key Washington and regional management officials regarding unpredictable budget circumstances. For FY 1988, the FAA has largely achieved this objective through a series of meetings and guidance starting in the summer of 1987 and continuing through the Administration's Review Committee (ARC) meeting of March 17, 1988. FAA management was apprised early and continuously about the prospects of Gramm-Rudman-Hollings reductions and pay raise cost absorptions. Policy guidance was issued following ARC meetings held in September and November 1987, and in January and March 1988.

  A conference of all senior agency budget officers was held in October 1987 to develop a plan to meet the Secretary's critical aviation safety objectives within the budget limitations. The agency implemented a hiring slowdown in October of non-safety personnel, and converted that into a freeze in November. This freeze was substantially lifted in January.

  FAA has developed a prototype automated Budget Information System which compares actual obligations to plans and to prior financial periods. The system significantly enhances FAA's ability to isolate problems, facilitate automated projections, and provide a high degree of accuracy in tracking budget performance. Data for the previous month is usually available by the sixth workday of each month.

  The collective result of these actions is that FAA's overall rate of spending has been kept within target despite the FY 1988 absorptions and reductions. More important, FAA has conserved resources so that key September 1988 employment goals for controllers, safety inspectors, security, and maintenance personnel will be met. Lower priority work has been deferred in an orderly fashion.

  RECOMMENDATIONS: The extensive review of financial resources now exercised by the ARC should be expanded to ensure that the agency, including the regions, meet critical safety employment levels as measured by the annual staffing plans.

FAA should expand its Budget Information System on an agency-wide basis as early in FY 1989 as is contractually feasible to allow regional access and input to the budget data base.

- Regional/Headquarters Control

  DISCUSSION: FAA has made progress in improving communications and control between the Washington Headquarters and the regions/centers. Biweekly conference calls to discuss financial and staffing issues in concert with agency goals are conducted by the Budget Office with all the regional budget offices and Washington program offices. Significant improvements have also been made in the allotment and allowance control processes.

  Despite the significant improvements, specific areas of regional and headquarters control need to be addressed:

  - Funding Requests Bypassing the Budget Review Process--during the course of the year, some current year funding requests or program recommendations proposing new spending are sent directly to FAA top management without the benefit of advance coordination with the Office of the Budget regarding alternatives or the identification of offsetting reductions.

  - Final Contract Award Greater Than Planned--some contracts have been awarded for amounts greater than planned, resulting in internal funding shortfalls in some programs. This creates a control problem and requires unplanned adjustments in other program areas. To the extent that major proposed contracts exceed budget estimates, they should be treated as new resource proposals and processed accordingly.

  - Region Procurements Citing Washington Funding Codes--a relatively small but persistent problem exists because some regions/centers are citing Washington Headquarters funding to purchase local required items or are making purchases for Washington required items on the assumption that policy approval by the headquarters office automatically means funds are reserved. FAA has recently completed a study of this problem.

  - Reimbursable Agreements--reimbursable agreements with and from other agencies are entered into by regions, centers, and Washington program offices. Most of these agreements are of a recurring nature. These do not require FAA spending authority, but FAA's quarterly obligation limitations imposed by OMB (apportionments) must be adjusted in advance of using these funds, to avoid Anti-Deficiency Act violations. Some of these agreements are not coordinated with the Office of Budget, thus creating control problems. FAA has begun to correct this problem.

-- Spending and Staffing Controls--some regions manage their budget allowances in a manner which makes it difficult for headquarters to be assured that agency goals, which include not only operating within reduced appropriations, but also meeting minimum staffing goals such as controllers, safety inspectors, security and maintenance personnel, will be met in an orderly fashion.

RECOMMENDATIONS: FAA should further strengthen its budget office's control over financial plans by requiring that all resource change requests, as well as all reimbursable agreements, and all proposed procurements that exceed the budget by some predetermined threshold, be coordinated with the Office of Budget.

FAA should work with the regional and headquarters budget offices to ensure that adequate controls are in effect and should review adequacy of and compliance with delegation of budgetary authority. FAA should conduct in-depth reviews of each regional office's budget program at intervals not exceeding two years, to ensure that controls and guidance are understood and followed.

INTERNAL REFORMS FOR FAA RULEMAKING

INTRODUCTION

A number of concerns have been raised about the length of time required to develop FAA's rules. It typically takes over two years to get a rule finalized.

Typically, the office responsible for developing a significant regulation provides the draft regulatory document to the FAA's Chief Counsel. That proposal is cleared at the senior staff level within the Operating Administration. It is then forwarded to the General Counsel of the Office of the Secretary (OST), and then cleared by senior OST staff. The document is then submitted for Secretarial concurrence. This procedure, while allowing a thorough review of the document itself, provides for guidance by either the Administrator or the Secretary very late in the process.

While the Task Force's review initially focused on ways to bring the Secretary's views into the process earlier, it was soon apparent that senior FAA officials are not always provided an opportunity to influence the priority or policy of proposed rules as early as they should be. Many of the problems relate to the organizational environment in which FAA completes the rulemaking process. Each office in FAA (e.g. Aviation Standards, Air Traffic) has responsibility for rulemaking along with the Office of Chief Counsel.

The Administrator's and/or the Secretary's suggestions, concerns and priorities are not always addressed in a timely manner because staff officials preparing the rules may not receive, or be properly advised of their views.

The rulemaking process is complex, as are the rules themselves. They must be developed with care, yet with as much speed as possible. Streamlining the rulemaking procedures requires a thorough review of the process in the context of the organizations which are responsible for preparing the rules.

RECOMMENDATIONS: At the Task Force's suggestion, the Secretary has directed that periodic regulatory status meetings be held with the FAA Administrator, Deputy Secretary, and other appropriate senior-level staff to discuss the substance of regulatory issues and options for responding to concerns. These meetings will significantly improve two-way communication and contribute to moving rules more quickly and efficiently.

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June 23, 1988

Hon. Norman Y. Mineta, Chairman
Aviation Subcommittee
House Public Works & Transp. Comm.
2251 Rayburn House Office Bldg.
Washington DC 20515

Re: FAA Reorganization Hearings

Attn: David Heymsfeld, Staff Counsel

Dear Mr. Mineta:

I write in support of the Aviation Safety Commission's recommendations to return the Federal Aviation Administration to full independent status. But the crucial part of that proposal is to provide the FAA with a board of governors which would have quasi-legislative power.

I attach a memorandum I wrote on this subject some years ago while a consultant to the United States General Accounting Office on the legal aspects of FAA enforcement policies. Having provided a copy of it last year to Dr. Albertine, and from conversations with his aide indicating they were going to take a hard look at it, it is likely this memo is from whence the board of governors idea germinated. Regardless, whatever happens to the agency, such a group should be created.

I ask that you make this letter and attachment part of the committee record on these hearings. Thank you.

Respectfully,

Lawrence B. Smith

Lawrence B. Smith

Attachment: LBS memo to Mr. Morahan of GAO

UNITED STATES GOVERNMENT GENERAL ACCOUNTING OFFICE

Memorandum

TO : Edward M. Morahan FEBRUARY 22, 1980

FROM : Lawrence B. Smith

SUBJECT The FAA needs its own permanent regulatory body

The FAA's root problem is that the agency is the unhappy marriage of disparate functions: bread and butter (concrete and transistor) executive branch functions mated to regulatory functions that require it to in effect make laws on behalf of Congress. As structured the agency violates the concepts which led to the creation of ICC, FTC, SEC, CAB, NLRB, etc. Congress saw the need for federal legislation in these various areas of interest -- usually economic and, ergo, political -- but recognized it could not hope to cope with their individual complexities so invented these mini or quasi legislative bodies to enact laws on its behalf pursuant to a basic charter of purpose.

These independent agencies act as arms of Congress with no [illegible] to the executive branch and in clear conflict with it since the President has no veto over their rules though such rules have the force of law, a contradiction under our Constitution. Some compromise was affected by allowing the President to appoint members (but not discharge), rotate chairmen, and so forth. (A presidential veto over regulations promulgated by these groups is, I believe, being pressed before Congress.) The existence of these groups, strange animals not contemplated by the Constitution, has been upheld by the Court long ago. Their purpose, of course, was to provide an extension of the democratic process to rule making through an arena where the free exchange of ideas could be distilled into law as opposed to annointing a single adminstrative Czar or dictator (a concept used to cope with the exigencies of WW II).

An interest in matters economic is the common thread among the independents. Perhaps Congress felt the FAA would deal with the strictly technical and its rules were only a matter for engineers and aviators (though its charter to "promote" is a clear economic directive). As is well known this is a false premise. Much that the agency does in the name of air safety has great economic impact; the democratic process, by ameliorating bureaucratic bias, could also well improve safety regulation. Many FAA regulations are of such broad application they are of the sort that would be enacted into law by a state legislature rather than left to an independent regulatory body elected by no one (rules of the road, use of airspace, etc.). The FDA is a parallel example: though dealing with highly scientific and technical issues, its decisions are fraught with serious economic and political considerations. It too could use such a body as I suggest.

The consequences resulting from the lack of an FAA regulatory policy body can be traced from and through your safety hazards identification problems, rules enforcement, certification of aircraft and, I'm sure many others. Too often key policy matters are shaped by internal bureaucratic pressures, even bias of a single individual. Although FAA officials profess receptiveness to outside ideas (just write us a letter), those ideas are often buried within the agency. Competing ideas are best masticated through some sort of democratic process that guarantees each idea its equal place on the agenda -- a regulatory body guarantees there will be an agenda. The sympathic ear of just one member is all it takes to put it there, to require agency personnel to support, oppose, etc. The Detroit DC-10 cargo door incident is a case in point. 345 dead attest to that. Could a group like ALPA, for instance, have gone before such an FAA body, heat could have been applied to force an obvious and correct move. The same with certifying the DC-10 without safety locks to prevent asymetrical retraction of wing slats, an issue eminently within the purview and expertise of veteran airline pilots. The necessary counterpart to the issue of whether or not to open up the certification process is who then is to resolve disputes? And how? A regulatory body is the answer.

An FAA regulatory body might well long ago have asked and forced attention to the issues raised by your hazards identification and tracking report. The FAA's enforcement program, which is what brought me to thinking about this problem 12 years ago, has serious conceptual and structural defects, defects that profoundly affect civil rights; these will never be rectified though court decisions but could very well be through a regulatory body open to criticism from all sources. Such a body -- a permanent "blue ribbon" panel -- would act as a lightning rod, a punching bag, if you will, on which to focus public discontent or controversy and thus take a large load off Congress. (The NTSB serves as a partial role model but deals with after-the-fact judgments and has no power to compel.)

Since drafting the above I have reviewed the legislative history of the FAA Act of '58. The CAB prior to '58 was precisely the body we are talking about. Most of the arguments I've raised were made to Congress back then. The trouble with the CAB was it had a dual role in economic regulation of air carriers to which it gave most of its time -- and to the sacrifice of air safety matters. I am putting together a package of this testimony. You should find it of great help. I look forward to discussing this matter with you.

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